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PROPOSALS TO CONFORM THE CUSTOMS USER FEE ON MERCHANDISE PROCESSING AND THE SUPERFUND TAX DIFFERENTIAL WITH U.S. GATT OBLIGATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

JANUARY 25, 1989

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CONTENTS

Page

Press release of Friday, January 6, 1989, announcing the hearing 2

WITNESSES

Office of the U.S. Trade Representative, Judith H. Bello, General Counsel 5
U.S. Customs Service, Harry W. Carnes, Director, Customs Service User Fee Task Force 10

American Association of Exporters and Importers, Peter V. Handal 22
Joint Industry Group, Stephen J. Collins 36
Motor Vehicle Manufacturers Association, Stephen J. Collins 36
National Customs Brokers & Forwarders Association of America, Inc., Paul F. Wegener 42
Victor B. Handal & Bro., Inc., Peter V. Handal 22

SUBMISSIONS FOR THE RECORD

American Petroleum Institute, Charles J. DiBona, letter 48
Canned and Cooked Meat Importers Association, Marcia A. Wiss, statement 49
Israel, Government of, statement 50
Society of Independent Gasoline Marketers of America, R. Timothy Columbus, statement 53
United States Association of Importers of Textiles and Apparel, National Retail Merchants Association, International Mass Retailers Association, and National Apparel Textile Association, joint statement 55

PROPOSALS TO CONFORM THE CUSTOMS USER FEE ON MERCHANDISE PROCESSING AND THE SUPERFUND TAX DIFFERENTIAL WITH U.S. GATT OBLIGATIONS

WEDNESDAY, JANUARY 25, 1989

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
FRIDAY, JANUARY 6, 1989

SUBCOMMITTEE ON TRADE #1
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A PUBLIC HEARING ON PROPOSALS TO CONFORM CUSTOMS USER FEES AND THE SUPERFUND TAX DIFFERENTIAL TO U.S. GATT OBLIGATIONS

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will hold a public hearing on Wednesday, January 25, 1989, on proposals to modify customs user fees and the Superfund tax differential in order to conform these practices to U.S. international obligations under the General Agreement on Tariffs and Trade (GATT). The hearing will be held in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.

In June 1987, the GATT adopted a panel report finding that the 3.5-cent differential in the Superfund tax rates under section 4611 of the Internal Revenue Code between domestic and imported crude oil and petroleum products violates national treatment obligations under the GATT. In February 1988, the GATT adopted a panel report finding that the ad valorem structure of the fee, enacted in October 1986 under the Omnibus Budget and Reconciliation Act, imposed for processing of commercial merchandise entering the United States is inconsistent with GATT obligations.

The purpose of the hearing is to receive proposals from the Administration and the private sector to modify the two present practices in order to bring them into conformity with U.S. international obligations. Alternatively, the United States is obligated to offer compensatory trade concessions or accept foreign retaliation.

DETAILS FOR SUBMISSION OR REQUESTS TO BE HEARD:

Requests to be heard must be made by telephone to Harriett Lawler or Diane Kirkland [telephone (202) 225-1721] by the close of business, Wednesday, January 18, 1989. The telephone request should be followed by a formal written request to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee staff will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee office [(202) 225-3943].

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All

persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are requested to briefly summarize their written statements. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements to the Subcommittee on Trade office, room 1136 Longworth House Office Building, at least 24 hours in advance of their scheduled appearances. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons submitting a written statement in lieu of a personal appearance should submit six (6) copies of their statements by the close of business, Thursday, February 2, 1989, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing a written statement for the record of the printed hearing wish to have their statements distributed to the press and the interested public at the hearing, they may provide 75 additional copies for this purpose to the Subcommittee office, room 1136 Longworth House Office Building, prior to the start of the public hearing.

SEE FORMATTING REQUIREMENTS BELOW:

COMMITTEE ON WAYS AND MEANS FORMATTING REQUIREMENTS FOR PRINTING OF HEARING STATEMENTS, WRITTEN COMMENTS AND EXHIBITS

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

Chairman GIBBONS. Good morning, ladies and gentlemen. Happy New Year. Glad to start this 1989 on a positive note.

I do not expect us to pass as much legislation in 1989 as we passed in 1988, but I want it to be good legislation. And I consider this to be a very important subject matter. It is a small subject matter, but it is very important because the way we solve it will be a demonstration to the rest of the world that we respect the law, that we are not a scofflaw, that we want to do what is right when we have found we have been wrong in an international tribunal. So I am very serious about what we are talking about today, and I hope that we can bring it to a rapid conclusion.

I realize the administration is in transition, and that is always an awkward time to catch them. But this is a matter of high importance, I think, as far as what goes on in the rest of the international trading system. If we can participate and make law but then ignore it, then we destroy law and we destroy ourselves. But if we can participate and make law and follow the law, even though it may be inconvenient or it may be unpleasant, then we are better citizens for having done it.

So let us set a good example. We are starting on time. Let us start with enthusiasm. Let us determine to get this problem behind us. And I am not going to point fingers at anybody for the blame in the legislation. I am as much to blame as anybody else. I think the GATT decision was right, and we are going to live up to it.

Having said that, I welcome my fine friend, Mr. Schulze, and ask you, Mr. Schulze, if you have any comments you would like to make.

Mr. SCHULZE. Mr. Chairman, I do not have a statement at this time. I am looking forward to the testimony from the witnesses, and I appreciate the fact that you did start on time. Perhaps we are setting a new course this year in 1989, and I hope it is followed all the way through.

Chairman GIBBONS. Well, good.

I guess you all are going to appear as a panel this morning; is that right?

Ms. BELLO. Yes, Mr. Chairman, if that is acceptable to you.

Chairman GIBBONS. All right. Judith Bello, General Counsel of the Office of the U.S. Trade Representative, and Mr. Harry Carnes, Director of the User Fee Task Force, Office of Inspection and Control of the U.S. Customs Service.

First, Ms. Bello, I want to say on the record, I hate to see you leave.

Ms. BELLO. Thank you, Mr. Chairman.

Chairman GIBBONS. You have done an outstanding job in your job with the USTR, and I know you will do an outstanding job in the private sector.

Ms. BELLO. Thank you, Mr. Chairman. One of the greatest high points and pleasures of my job at USTR has been the work that I have had the privilege of doing with this subcommittee, with you, in particular, Mr. Chairman, and with your wonderful staff. That has been a superb relationship for which I am deeply grateful for all of your close cooperation.

Chairman GIBBONS. Thank you, Judith.

Mr. Carnes, we are glad to have you up here. I remember meeting you a few years ago in Miami, FL, when we were down there looking at some drug operations or some counterdrug operations, I should say, conducted by your agency. We are glad to have you here.

Ms. Bello, you may proceed as you wish.

STATEMENT OF JUDITH H. BELLO, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Ms. BELLO. Thank you, Mr. Chairman.

I would be grateful if my written statement could be included in the record.

Chairman GIBBONS. Without objection, it will be.

Ms. BELLO. Thank you, Mr. Chairman.

I will abbreviate my remarks orally, although I would be most happy to expand on them subsequently in response to any questions that members of the subcommittee may have.

Basically, I would like to make three simple points: First and foremost, as has often been the case in the past, we are beholden to you, Mr. Chairman, and to the members of this distinguished subcommittee for making your time available on this important subject at such an early date in 1989. We are grateful. We know that you have many other legislative items on your agenda, and we appreciate the fact that you were willing at this early date to make time available for this problem.

Second, Mr. Chairman, I would simply like to share the views you expressed in your introductory statement; that is, that this is a very important matter. It is important to the particular U.S. interests involved in these particular disputes. But beyond the commercial significance of these disputes, there are widespread effects on the credibility of the United States in the Uruguay round multilateral trade negotiations. We have indicated that one of our highest priorities in these important negotiations is the substantial improvement in the means of effectively and expeditiously resolving dispute. We will be substantially handicapped in that effort if we ourselves are found to be derelict in coming into conformity with our international obligations as they have been found by these two particular GATT panels.

So both the Superfund and Customs users fees have taken on an importance beyond the oil industry and importers, and do have an overriding significance for our international position and credibility.

Finally, Mr. Chairman, we look forward to working with you, to doing whatever we can to come into conformity. In both situations, as always, we basically face three choices, and that is it. Choice No. 1 is that we can amend U.S. law to come into conformity with our GATT obligations. This is always, far and away, our preference. It goes most in the direction of establishing our credibility in this area and evidencing our commitment to freer trade.

When we are unable to do so, as a second choice the administration prefers to provide compensatory trade benefits to adversely affected trading partners. This at least is certainly preferable to the

last of the three choices, which is simply suffering retaliation against U.S. exports.

In all cases, we prefer to come into conformity, but we are practical people. And when we are unable to achieve that objective, although it is our vast preference, our second choice is to provide compensation. There is nothing unusual about these cases in this regard, except that because they do have a special significance at this particular juncture of the Uruguay round negotiations, we would, if at all possible, like to come directly into conformity. Compensation is a distant second choice.

With that, Mr. Chairman, I will conclude and turn to the real expert in these areas, Mr. Carnes. I would be happy, if the subcommittee is interested, to discuss the legal niceties of the panel findings. But I think what is more important here is that we have been found to be in derogation of our responsibilities, and it is critical now that we act expeditiously to come into conformity as best we can with these obligations.

Thank you, Mr. Chairman.

[The statement of Ms. Bello follows:]

STATEMENT OF JUDITH H. BELLO, GENERAL COUNSEL
OFFICE OF THE U.S. TRADE REPRESENTATIVE
BEFORE THE INTERNATIONAL TRADE SUBCOMMITTEE OF THE
HOUSE WAYS AND MEANS COMMITTEE

Mr. Chairman, Members of the Subcommittee, I welcome the opportunity to testify before you today on the current status of the GATT Superfund and customs user fee disputes.

Since the GATT came into force in 1947, it has been the consistent objective of the United States to promote a world trading system governed by the principle of comparative advantage and the rule of law. To this end, we have pushed for dramatic worldwide reductions in tariffs and trade barriers and for strong and comprehensive disciplines over unfair trade practices. The benefits are apparent. We have opened up foreign markets to American exports. International trade has risen over ten-fold. And worldwide, consumers and nations have benefited from increased access to more and better products.

As you are well aware, Mr. Chairman, the work of trade liberalization continues today. In 1986, at the urging of the United States, the GATT trade ministers launched the Uruguay Round of Multilateral Trade Negotiations. These negotiations represent the most ambitious effort to extend and expand GATT rules and disciplines since the original General Agreement was adopted in 1947. The United States has a sweeping and comprehensive agenda for the round. We hope to extend GATT disciplines to new sectors like services, investment, and intellectual property in order to promote American interests. We hope to fix the long-standing problems of world agriculture and eliminate trade-distorting subsidies. And finally, we hope to achieve dramatic improvements in the GATT dispute settlement system, in order to ensure the reliable, expeditious resolution of disputes.

For that reason, Mr. Chairman, the GATT panel reports on the U.S. Superfund and customs user fee have become an important test of our credibility in the GATT and our commitment to the GATT dispute settlement process. As you know, the U.S. has been unable to comply with the reports. If we want other nations to eliminate GATT-illegal trade barriers when we win before a panel, we must be equally prepared to change our actions and policies when we lose. Failure to bring ourselves into GATT-conformity can only undercut progress in the Uruguay Round. Accordingly, we appreciate the Subcommittee's willingness to hold expeditious hearings on these important issues.

With respect to the Superfund program, we support the goal of cleaning up toxic waste and creating a safer and cleaner environment for all Americans. Similarly, with respect to the customs user fee, we believe that it is only fair to require persons who use government services, like those provided by the U.S. Customs Service, to bear the cost to the government of providing those services. We believe that, with only minor changes in existing legislation, it will be possible to achieve the policy goals in the Superfund and customs user fee programs in a manner that is fully consistent with our GATT obligations.

With respect to each of these programs, separate GATT panels of experts found certain aspects of them to be inconsistent with GATT obligations of the U.S. And in each case, we have only three choices: (1) eliminate or modify the features of current U.S. legislation found to be GATT-illegal; (2) compensate adversely affected GATT parties; or (3) suffer retaliation by adversely affected GATT parties against U.S. exports. With respect to both Superfund and customs user fee, our first choice is to amend U.S. law and eliminate the GATT-inconsistent aspects. Regarding Superfund, we prefer to eliminate the differential between the taxes on imported and domestic petroleum products at the revenue neutral point, so as to avoid any adverse budget consequences. Regarding Customs user fee, we prefer to establish a fee schedule that avoids shortcomings of the current fee arrangement. In both cases, eliminating the GATT inconsistency is clearly preferable to compensation or suffering retaliation. This course most strongly reflects the U.S. commitment to our GATT obligations and to freer and fair trade, and enhances our credibility and effectiveness in the Uruguay Round negotiations.

However, if GATT-conformity were not possible, our second choice would be to offer compensation to adversely affected GATT contracting parties. While this approach is not as satisfactory as GATT conformity, it is preferable to retaliation by some trading partners against U.S. exports.

For this reason, we believe that it is essential that Congress and the Administration work together to develop appropriate solutions to the Superfund and customs user fee decisions. We are prepared to work closely with you on this effort.

Mr. Chairman, I would like to briefly review the issues raised by the panel reports and to review possible solutions to the adverse panel findings.

Superfund

In October 1986, the Superfund Amendments and Reauthorization Act of 1986 introduced an excise tax on imports of crude petroleum and certain petroleum products. The tax assessed on imports, 11.7 cents per barrel, exceeded the tax assessed on domestic production of the same items, resulting in a tax differential of 3.5 cents a barrel. Subsequently, a GATT panel examined the Superfund tax and found it inconsistent with the requirements of Article III of the GATT, which prohibits the application of internal taxes to imports in excess of the rate applied to domestic products. The panel recommended that the United States bring the tax into conformity with GATT obligations. The report and recommendations were adopted in July, 1987.

Our efforts to secure legislation to bring the Superfund tax into GATT conformity have not borne fruit. Meanwhile, our trading partners have threatened to retaliate. In March of 1988, the EC requested permission from the GATT Council to retaliate against the United States. In September, in order to avoid retaliation against U.S. exports and following consultations with the staff of the House Ways and Means and Senate Finance committees, the U.S. representative to the GATT indicated that the U.S. government would enter into negotiations concerning compensation with contracting parties who complained about the application of the Superfund tax on petroleum and certain petroleum products. The EC, Canada, and Mexico accepted this offer, and some preliminary discussions have been held. We stressed, however, that we would prefer to work towards elimination of the tax differential.

Customs User Fee

In the United States Customs User Fee decision, a panel reviewed the GATT-legality of a customs merchandise processing fee which was created by an amendment in the Omnibus Budget Reconciliation Act of 1986 to section 13031(a) of the Consolidated Budget Reconciliation Act of 1985. The fee was 0.22 percent for ten months of the 1987 fiscal year. In 1988 and 1989, the fee was set at 0.17 percent or a lesser ad valorem rate determined by the Secretary of Treasury to be sufficient to fund the "commercial operations" of the U.S. Customs Service for the upcoming fiscal year.

The panel held that an across-the-board ad valorem fee is inconsistent with GATT. It stated:

> The Panel concluded that the term "cost of services rendered" in Articles II:2(c) and VIII:1(a) must be interpreted to refer to the cost of the customs processing for the individual entry in question, and accordingly that the ad valorem structure of the United States merchandise processing fee was inconsistent with the obligations of Articles II:2(c) and VIII:1(a) to the extent it caused fees to be levied in excess of costs.

Accordingly, the U.S. fee must be revised to tie it more closely to the actual cost of processing particular entries.

In our view, the solution is relatively straightforward. We must develop a reasonable fee schedule in place of the flat ad valorem rate established in current law. The schedule can be set up in terms of classes of entries or transactions. By varying the fee

according to the type of entry, we can tie the fee more closely to the approximate cost of the import transaction, as directed by the panel. While one could argue that the panel directed the U.S. to calculate the fee in terms of the actual work done on an individual entry, this would make the fee arbitrary and unpredictable. If an importer were singled out for a closer examination or for special testing, the fee could rise dramatically. The unpredictability of the fee would penalize importers and inhibit trade. Consequently, we believe that a general schedule of fees reasonably related to the approximate cost of processing is sufficient to meet our GATT obligations.

At the same time, we must structure the new system to give the U.S. Customs Service sufficient flexibility to ensure that importers do not avoid paying their fair share of the cost of processing entries. For example, levying the fee solely on an entry-by-entry basis could encourage importers to lump several import transactions into a single transaction in order to reduce their payments. Customs needs the flexibility to change the level of the fee as their costs rise and fall in response to the way importers conduct their customs operations. If Customs does not have that flexibility, receipts from the fees may not reflect the cost the of the service provided.

We believe that an appropriate solution should meet the following requirements:

1. The fee schedule must be consistent with GATT Articles II and VIII.

2. The fee schedule must be reasonably tied to approximate cost of services rendered in processing a transaction or a class of transactions.

3. These costs include direct costs and certain indirect costs that are closely connected to the customs entry.

4. The Customs Service will need the flexibility to adjust the fee to the actions of the importers in order to ensure that the fee accurately reflects the approximate cost of the service provided.

5. The fee must be reasonably predictable, so as to avoid penalizing importers.

Mr. Chairman, to summarize, we fully support the policy goals of the customs user fee program. It is only fair that, in the current budgetary situation, those who use government services pay the cost of providing those services. This principle was fully accepted by the GATT panel, which questioned only the ad valorem method for calculating the fee and the inclusion of certain indirect costs.

We believe that GATT-consistency can be achieved through relatively modest changes to section 13031(a) of the Omnibus Budget and Reconciliation Act. These changes will not undercut the revenue and policy aims of the user fee program. I understand that the U.S. Customs Service is working to develop an appropriate schedule that we expect to share with you shortly. We would also welcome any ideas that you may have. We look forward to working with you to develop a GATT-consistent customs user fee. In addition, we seek your support in bringing the Superfund program into conformity with the GATT, as we outlined previously.

Chairman GIBBONS. Before I go into extensive questions, is there any doubt in your mind that the panels were right?

Ms. BELLO. Mr. Chairman, on Superfund, I would like to remind the subcommittee of the good news, and that is we won on half of the issues before the panel, regarding petrochemical feedstock derivative products, and persuaded the panel that there was no discrimination there.

There is no doubt in my mind, Mr. Chairman, that the Superfund tax on imports clearly exceeds the tax that is applied to domestic products. It was a factual situation impossible to deny. We did our best to persuade the panel that even though there was clear discrimination, which we were unable to refute, nonetheless there was no significant trade effect and, therefore, it should not be a matter that would warrant an adverse panel finding, but we lost.

On Customs users fees, I might quarrel with some particular elements of the panel finding. And I note that we in our survey found that other trading partners around the world themselves have practices that we believe strongly are inconsistent with the panel finding. When we have our house more in order and are well on the road to coming into conformity with our obligations under this panel report, it would be my recommendation that we pursue vigorously within the GATT these remaining practices by some of our trading partners, to make sure that we are not alone in coming into conformity with our GATT obligations in this respect.

Chairman GIBBONS. All right. Thank you.

Now, let us go to Mr. Carnes.

STATEMENT OF HARRY W. CARNES, DIRECTOR, CUSTOMS SERVICE USER FEE TASK FORCE, U.S. CUSTOMS SERVICE

Mr. CARNES. Thank you, Mr. Chairman. I would like to also, with your permission, submit my statement for the record and summarize my statement.

Chairman GIBBONS. Without objection, it is agreed to.

Mr. CARNES. Thank you.

In 1986, two pieces of legislation enacted the user fee program. The last piece of legislation, the Budget Reconciliation Act of 1986, created the merchandise processing fee, which is the topic of our discussion today. These fees have, in fiscal year 1988, recorded collections of $787 million. Taking those figures into account and other fees that we collect on behalf of other agencies, Customs collected approximately a billion dollars last year.

We believe the trade community has benefited from these programs because of increased resources in the commercial operations area. Notwithstanding that, the MPF has, as we are aware, come under scrutiny by the General Agreement on Tariffs and Trade and also the importing community.

With respect to the General Agreement on Tariffs and Trade, Canada and the European Community requested that a panel be convened to review our merchandise processing fee, and the panel did find us in violation in two areas: One, on the ad valorem nature of the fee; and then the way we calculate our commercial operation costs.

In the first instance, they pointed out that two separate products could take the same amount of processing time to process, but because of the ad valorem nature of the fee, one would be charged a much higher rate than the other. Second, they found five items which they perceived to be inappropriate in calculating our Customs commercial operation costs.

The administration in May 1988 submitted a bill in an attempt to rectify those violations. And as we are all aware, it was not introduced. A revised bill is being formulated and will be submitted, I am sure, this session.

It is clear that we need to reach a final decision on this so that we can get our house in order. We are prepared to do that with the committee and with the other agencies.

In summary, Customs supported the implementation of the ad valorem user fee legislation by establishing a collection program that meets its requirements. Although a transaction-based fee would represent new challenges, we believe we are prepared to work with the committee and any other entities to make that a reality.

Thank you very much, Mr. Chairman.

[The statement of Mr. Carnes follows:]

STATEMENT OF HARRY W. CARNES
DIRECTOR, CUSTOMS SERVICE USER FEE TASK FORCE

Mr. Chairman, Members ot the Committee, I am pleased to be here today as director of Customs User Fee Task Force, to discuss with you those changes to the Customs Merchandise Processing Fee (MPF) which are necessary to bring the "Fee" into conformance with the General Agreement on Tariffs and Trade (GATT) Dispute Panel's finding of February 1988.

Let me provide you with some general background and historical facts surrounding Customs User Fee Program. Customs collects user fees for a wide variety of Customs services. The fees are mandated by the User Fee Statute enacted by Congress as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). The COBRA Fees were effective on July 7, 1986, and cover services provided primarily for conveyance (trucks, railcar, vessels, private yachts/aircraft, etc.) and passenger-related (air & sea) Customs processing. On December 1, 1986, an additional user fee category was mandated by The Omnibus Budget Reconciliation Act of 1986 (OBRA) to cover the costs of processing commercial merchandise imports. This fee, the MPF, is the main user fee topic under discussion today. The MPF is an Ad Valorem fee of 0.17 percent assessed on the value of commercial entries.

Collection activity from Customs User Fee Program in fiscal year 1988 reached a record high of approximately $787 million; the MPF accounting for $656 million of this total. When considering the collections made by Customs for the Army Corps of Engineers (for harbor maintenance), and the Department of Agriculture (for processing certain meat and honey imports), Customs collected almost $1 billion in user fees during Fiscal Year 1988.

As a result of Customs User Fee Program, we believe that the trade community has benefited through increased resources in Customs commercial activities. Though overall a successful user fee program, the 1987 Omnibus Budget Reconciliation Act forced Customs to absorb certain costs of operations such as startup and oversight fees for FTZ'S and bonded warehouses. These costs, when absorbed, decrease user fee receipts available to offset appropriated commercial service enhancements.

As the MPF User Fee became more of a fixture in the Customs clearance process, uneasiness with the fee began to surface--not only from importing community interests but also GATT members. Generally, the GATT prohibits charges levied at the border (other than tariffs and charges which serve to equalize internal taxes), unless the charges are (1) limited in amount to the approximate cost of services rendered; (2) do not represent an indirect protection to domestic products and (3) do not represent a tax on imports for fiscal purposes. A user fee is permitted under a provision of the GATT which allows countries to approve non-tariff charges if they are commensurate with the cost of services rendered. For a variety of reasons, certain parties to the GATT felt that Customs MPF constituted a tax on imports for fiscal purposes. The European Community and Canada requested review of the U.S. MPF by a GATT dispute panel.

The GATT panel faulted the Customs MPF on two grounds: one, the ad valorem nature of the fee to the extent that it caused fees in excess of the costs of Customs processing of entries, and, two, Customs basis for computing the charges.

In the first instance, the GATT panel ruled that the ad valorem fee resulted in revenue in excess of actual Customs commercial entry processing costs. For example, a high-valued shipment could require the same processing time as a low-valued shipment but would be charged considerably more. With respect to the second finding, Customs had established the MPF based upon an assumption that the commercial operations budget of the Customs Service equaled the cost of Customs processing of entries.

The GATT panel found that some of the items in the commercial operations budget should not have been used to determine the costs of Customs processing of entries. These items included the costs involved in (1) air passenger processing; (2) collecting and forwarding export documentation; (3) the budget for the Office of International Affairs; (4) the Customs processing of imports exempt from the MPF and (5), certain carryover costs from the first two months of Fiscal Year 1987. Since the United States is a contracting party to the GATT, the Administration proposes that the MPF be changed to conform with the findings of the GATT panel.

On May 4, 1988, in the wake of the GATT ruling, the Administration transmitted to Congress a bill to reconcile the current MPF with the GATT panel decision. As you know, that bill was not introduced and therefore not considered during the 100th Congress. A revised bill is being formulated for resubmission and consideration during this session of Congress. The revised bill is expected to propose that the Ad Valorem fee be replaced by a transaction-based fee.

In proposing the fee change from ad valorem to transaction-based, we are in the process of developing revised legislation that will bring us into conformity with our GATT commitments. In this way, we can avoid suffering retaliation against U.S. exports, or paying compensation to our trading partners by cutting our tariffs. It is clear that we need to reach a solution which is firm and final. In that way, the Administration and the Customs Service can project needs and tie resources to those needs, and the trade community can build anticipated fees into their cost structures.

In summary, Customs supported the implementation of the Ad Valorem User Fee legislation by establishing a collection program that meets its requirements. Although a transaction-based program would create new administrative challenges, Customs is prepared to meet them to ensure whatever legislative initiative enacted is implemented fairly and professionally to the satisfaction of all concerned.

Chairman GIBBONS. Thank you.

As I said in my opening statement, I think the importance of this subject matter far transcends the amount of money involved in it, or the principles of law involved in it. It does show whether or not we are going to live by the law that has been commonly accepted by the other nations. I think that is most important, and I appreciate your stressing that by us acting, and acting affirmatively, we will enhance our credibility in the bargaining process.

I realize that it is pretty difficult to go after people who are perhaps violating the law when you are the principal violator of it yourself. So I would hope that as soon as we get our house in order, that other people who are using illegal systems such as ours, or such as those that are in existence, will be properly pursued. And we can establish a rule of law in this area rather than just accommodation.

How far along are you in the preparation of this proposed legislation? When do you expect you can bring something to us, something concrete?

Ms. BELLO. The answer is different for the two different cases, Mr. Chairman.

With respect to Superfund, we had sought support from the chairman of the Ways and Means Committee and the chairman of the Senate Committee on Finance to eliminate the tax differential at the revenue-neutral point as our preferred approach to resolving this problem. But we did run into difficulty in that, as long ago as last March, the European Economic Community sought approval from the GATT Council to retaliate against the United States because we had for so long failed to come into conformity with the panel finding, which was adopted by the GATT Council in July 1987.

We felt at that point in time, following consultations with the staff of this subcommittee and the Finance Committee, that our best course was to enter into preliminary discussions of compensation—again, as a second choice, but certainly preferable to suffering retaliation against U.S. exports.

We seek the guidance, of our oversight committees as to whether there will be support for our preference, which is to eliminate the tax differential at the revenue-neutral point. That remains our preference, but if we are unable to achieve it, at some point we need to fish or cut bait.

Chairman GIBBONS. Well, I realize we got problems with that, with Bush from Texas and Bentsen from Texas. You know, I am being realistic, but I would just as soon lay it on the line and see what is going to happen. Somewhere we have got to face up to this, and maybe you as an outgoing person, not worried about any retaliation against your job, ought to help throw something out here that we can chew on.

I know Mr. Bush. He sat right here on this committee for many years, and he was a great defender of the Texas oil interest. But he was always fair. And I know Mr. Bentsen, and I think him to be a fair person. But they are not going to volunteer to lead that charge. Maybe some of the rest of us are going to have to lead it, and they will just follow. But we have got to get moving.

Ms. BELLO. Well, the standing administration proposal has remained, and still is today, to eliminate the tax differential at the revenue-neutral point. But having been unable to date to generate enough practical political support in the Congress for that approach, we have entered into compensation negotiations with some of the affected complainants. We will consult zealously with this subcommittee and the staff on developments in those negotiations.

And if it appears that compensation, practically speaking, is the most likely way to expeditiously come into conformity with our obligations, then that is vastly preferable to protracted delay and, therefore, likely retaliation against U.S. exports by some of the trading partners concerned.

I stress that retaliation against U.S. exports surely is no one's preference since the European Economic Community, at least, has made clear that the objects of that retaliation will be hydrocarbon-based products exported from the United States, largely from Texas and obviously other oil-producing States.

So that is not a solution that is preferable in anyone's eyes. What we need to do is, with your advice, decide whether to give up on our first choice at some point and move quickly to our second choice.

Chairman GIBBONS. Without a vote of the committee, I cannot really tell you what to do. But I will tell you, if you will send the bill up, I will introduce it and we will ask the chairman to schedule it. I cannot go any further than that. That is where my jurisdiction ends, or my power ends.

I think we ought to get on with the act. I will introduce it this afternoon or tomorrow or tonight or any time.

Ms. BELLO. Thank you, Mr. Chairman, for your helpfulness.

On the other issue, the Customs users fee, as Mr. Carnes indicated, we did submit a proposal last May. The problem with it, politically and practically speaking, was that I believe in the view of the subcommittee it simply asked for too broad a delegation of authority for the Customs Service.

Chairman GIBBONS. That is correct.

Ms. BELLO. We recognize that, and we are practical people. I do want to stress that it is important for the Customs Service to have a substantial measure of flexibility in this area.

Chairman GIBBONS. They have got to. I understand that. They have got to have some flexibility in these fees.

Ms. BELLO. But Mr. Carnes and his task force and the Customs Service and Treasury generally are working very hard on this issue, and we hope to be able to come to you—having consulted, of course, with staff fully in advance—in the very near future and suggest something specific with respect to the customs users fee panel.

Chairman GIBBONS. Well, I have read the excerpts of the GATT decision. I am convinced there is no practical way of solving this Customs user fee unless there is some flexibility left to Customs to allocate costs and still comply with the principles that are laid down in GATT.

But do not tempt us with just sending up a blank check and saying, sign it and we will fill it in. Fill in as much of it as you can, and leave yourself a little flexibility. When that legislation is

ready, I will be happy to introduce it for you. We will put it out here and see if it will fly.

Ms. BELLO. Mr. Chairman, we did try the blankcheck approach, but we have not succeeded to date.

Chairman GIBBONS. No, it is not going to work. It will not work.

Ms. BELLO. I appreciate that.

Chairman GIBBONS. All right. Mr. Carnes, have you got any comments?

Mr. CARNES. Well, I would just want to say that we have met with your staff, and we are prepared to work with them to come up with a practical fee schedule that would meet both of our needs, I think, and be GATT-consistent. So we are aware of your concern, and that has been brought back to our managers. We will address that.

Chairman GIBBONS. All right. Mr. Schulze?

Mr. SCHULZE. Thank you, Mr. Chairman.

The problem with the Customs user fee is solely that it raises too much money?

Ms. BELLO. No, Mr. Schulze, that is not, in my judgment, what the panel found.

The central point of their finding was that an ad valorem-based fee was not sufficiently closely and reasonably tied to the approximate cost of the customs services rendered; that it was not necessarily at all true that a higher value product required and received more services from the Customs Service than a lower value product. And so the panel essentially found, as the EEC and Canada had urged them to do, that, in fact, the high-value importers were required to cross-subsidize low-value importers, and that this was inconsistent with GATT articles II and VIII.

Mr. SCHULZE. How do we compare with other nations? I understand that over 50 countries charge some sort of user fee. My understanding is that some of them are ad valorem charges. Why is it that we are out of step and none of them seem to be out of step?

Ms. BELLO. Well, Mr. Schulze, it is not my view that others are not also culpable in this area. We mounted a very spirited defense of the ad valorem fee that is in place. We argued that there were all of these other countries which had similar fees, and that it was, therefore, unfair to single out the United States' particular fee. We also argued that an ad valorem fee had many trade benefits, and that, in fact, the predictability of an ad valorem fee was probably the least trade distortive, trade chilling approach.

Nonetheless, the response of the protagonists in this particular case and the finding of the panel was that they could address other countries' culpable practices at some later date. For now, the issue was the U.S. merchandise processing fee. And they found our particular fee not to be in conformity.

Once we are well on the road to cleaning our own hands in this area, my recommendation would be that we pursue vigorously within the GATT fee practices by other countries, because we have no intention of solely, exclusively, alone observing GATT standards. We expect them to be applied and observed uniformly.

Mr. SCHULZE. Judy, how about legislation which would say, "When all of our trading partners are in conformity, we would then change our formula?"

Ms. BELLO. I expect that the response by trading partners would be, in turn, that they would come into compliance when the United States was in compliance. I think that the——

Mr. SCHULZE. They have been doing it for a long time. These are not things that—our Customs user fees are relatively new, as well as the import fee for the Superfund. But some of these others—I understand Hungary, Iceland, Hong Kong, Brazil, many of the African nations—all are in violation of this theoretically. So why shouldn't we say that when the other trading nations are in line, we will come along?

In other words, I know the chairman does not like to do this, but I am saying, I like GATT and they are nice people, but oftentimes they are not close to reality. They are over there, and I think it is a marvelous place to visit.

Chairman GIBBONS. Would the gentleman yield?

Mr. SCHULZE. Sure.

Chairman GIBBONS. I guess it is my law school training, but I was taught that you never come into court expecting equity unless you are ready and have done equity yourself. You come in with clean hands, and then you get your remedy.

Now, here, the European Community, 320 million people, said, "Our hands are clean, and we charge you with a foul." And 25 million people north of our border, the Canadians, came in and said, "We charge you with having violated our agreement, and we charge you with a foul."

I do not see how we can expect to move against all the other foulers out there until we say to the people who are clean, "We have done our job." That is one of the basic fundamentals of American law, that you cannot get equity until you have done equity and your hands are clean.

Mr. SCHULZE. Sam, I hear you and I understand that. But if you correlate this to a value-added tax, there is absolutely no equity. Everything we send over there has a 20 percent tax added on to it, and this is just a minuscule——

Chairman GIBBONS. But, Richard, we agreed to that, as stupid as it was. It was stupid. We agreed to it. We signed off on it.

Mr. SCHULZE. I understand but I did not and you did not.

Chairman GIBBONS. We are bound by the decisions of our ancestors unless we go into operation to change it. And that is the principle there.

I am sorry. Thank you for yielding.

Mr. SCHULZE. OK.

Why would we not then be able to reduce the ad valorem tax a little bit and just say that we have done our job. How about bringing it down slightly on products over a certain amount?

Ms. BELLO. There is a requirement in the GATT, Mr. Schulze, that these kinds of fees not be used to raise money. But simply reducing the fee while maintaining its ad valorem nature would not respond to the argument that this approach requires high-value importers to cross-subsidize the services that are provided to low-value users. So that approach would——

Mr. SCHULZE. Judy, I understand that the major complaint is not that it is raising too much money. Is that correct?

Ms. BELLO. That is correct. Reducing it, I am sure, would be welcomed by exporters to the United States and importers here. But it would not respond to the central finding of the panel, which is that the ad valorem basis for the fee which is inconsistent with the obligations under articles II and VIII.

Mr. SCHULZE. Well, how about a very slight graduation, then; maybe three categories, you know, up to a certain point?

Ms. BELLO. Well, we certainly do not maintain that it is necessary to have an entry-by-entry specific fee to be in conformity with our GATT obligations.

Mr. SCHULZE. I agree.

Ms. BELLO. That is unworkable. It is not administrable, and it would be trade chilling and distorting.

We are exploring the notion of having categories, broadly speaking, of fees by type of entry. That notion, we think, may marry our need to come into conformity with our GATT obligations with predictability for importers. And it can be administered by the Customs Service.

Mr. SCHULZE. I think that whatever we do, we should certainly keep an eye on administratability and the fact that we should keep it relatively simple. With all due respect to the chairman there are a lot of things that GATT does that I do not approve of. In fact, if this next round, the Uruguay round, is not too successful, we may find that GATT is a nice set of letters but relatively meaningless in the real world of international trade. I do not necessarily believe that we should be in a big rush to jump to respond to GATT's wishes.

If it can be worked out and worked out amicably, I am in favor of it. But I do not think that we ought to disrupt our import-export structure just to rush to come in conformity. In most instances, when other nations are in noncompliance with GATT, they take a long, long time, and we are very understanding of the time they take to resolve those differences.

So I congratulate the chairman on starting this process, but I think it will probably be a slow process. And I have no big problem with that.

Thank you.

Chairman GIBBONS. Don.

Mr. PEASE. Thank you very much, Mr. Chairman. I have a couple of general questions.

Ms. Bello, you have clearly stated the USTR's preference for changing the law; and if that is not possible, going to compensation; and then retaliation only as a final result. I can understand that.

Can you tell me, in general, what the process is within the GATT for compensation and retaliation? In other words, the original GATT panel ruling came down July 1987. That was 18 months ago. Who decides whether we proceed with compensation or whether our trading partners proceed with retaliation? Does either one of those decisions have to be made with the approval of the GATT Council, for example?

Ms. BELLO. The process normally, Mr. Pease, is that in every case, our preference, when we are found to be in nonconformity and we cannot come into conformity legislatively, is to enter into

compensation talks with the adversely affected trading partners. However, ultimately, if the trading partners concerned are not satisfied by the compensation that we offer them, then they have the right to go to the GATT Council, complain that the compensation offered is inadequate, and seek authorization from the GATT to retaliate against the United States.

That is, in fact, the avenue that the European Economic Community pursued beginning in March. It was only, in my judgment, by our willingness to enter into at least preliminary compensation discussions that we have been able, for this long a period of time, to avert retaliation by at least the EEC against U.S. exports. But the process in these cases is for the parties concerned to try to work out a mutually acceptable compensation package. If it is not mutually acceptable, the party which is unhappy with the offer made by the party found not to be in compliance can go to the Council and seek authorization to retaliate from the GATT.

At that time, we could offer a spirited defense of the compensation offer that we had made. But normal GATT practice is to give the party which won the panel report authorization to retaliate if it is unhappy with the compensation offer.

Mr. PEASE. Thank you very much. Then the GATT Council does not really act as a judge and jury about the adequacy of the compensation package offered; is that right?

Ms. BELLO. That is correct, sir.

Mr. PEASE. It does not?

Ms. BELLO. It does not.

Mr. PEASE. OK. Then if the aggrieved party goes to the GATT Council and seeks permission to retaliate and is given permission to retaliate, then can we, if we are being retaliated against, complain that the degree of retaliation is excessive?

Ms. BELLO. Certainly, we could. Yes, sir.

Mr. PEASE. And does the GATT Council make a judgment in that case about the fairness of the retaliation?

Ms. BELLO. In the first instance, what we would do if we felt that our compensation offer was fair and equitable, we would argue within the GATT Council that we had made a good faith and equitable offer; that, therefore, the Council should not authorize retaliation; that that is inappropriate and undesirable from the viewpoint of the international trading system.

But if, nonetheless, authorization were given, and what we felt was disproportionate retaliation was effected against U.S. exports, we ourselves would have the right, then, if we felt we were aggrieved, to ask for the establishment of a panel and to have that matter adjudicated, which then, of course, would go to the GATT Council for adoption.

Mr. PEASE. Now, I understand that the GATT Council basically acts by consensus. In either the case of the compensation or the retaliation, would we or our trading partner have the opportunity to block the decision of the GATT Council?

Ms. BELLO. We would have that opportunity, Mr. Pease. The problem in this particular case is that, as the chairman has indicated, there is disproportionate importance attached to these disputes because of the critical juncture at which we find ourselves in

the Uruguay round negotiations. So the United States would be most loathe to be seen to be blocking that step.

The other thing I would hasten to point out, Mr. Pease, is that many trading partners do not seek GATT authorization to retaliate. They simply do it under their own sovereign power. So it would not necessarily be possible for us to prevent or preclude an adversely affected trading partner from taking unilateral action in response to our failure to come into compliance.

Mr. PEASE. Well, I understand the undesirability of our using our authority within the GATT Council to block consensus on any question, really.

Could you give us an example, just conjecture, of the kind of compensation package the United States might offer in this particular case? And if that is not acceptable, the kind of retaliation that we might expect to suffer?

Ms. BELLO. Well, I can certainly do the latter. I expect that if we are unable to come into conformity or provide adequate compensation, then the retaliation will be against U.S. exports largely of petrochemical products, and thereby largely affect the oil states.

Regarding compensation, we have entered into some preliminary compensation discussions. We are consulting with the staff about those, and we certainly will keep the subcommittee apprised.

Mr. PEASE. Can you look at previous compensation packages and tell me the nature of the compensation that we offered? Was it reduced tariffs on specific products or an across-the-board reduction in tariffs? What was the nature of the compensation?

Ms. BELLO. The nature can be anything which we can persuade the adversely affected trading partners is reasonable. It usually would be, I would expect, tariff reductions on particular products of interest to them.

One of the problems in compensation in this respect is Canada in particular, because, of course, under the Free Trade Agreement with Canada, all of these tariffs will be phased out—in the petroleum sector, over 5 years. So it is going to be hard to compensate the Canadians. We have a special problem with Canada on compensation even if we were to conclude satisfactorily compensation negotiations with the other adversely affected GATT trading partners.

Mr. PEASE. I presume that if we are reducing tariffs as a form of compensation that we cannot reduce tariffs only on products from the agreed nation. We would have to make those across the board. The best we can do is target the tariff reductions to products which are of particular interest to the aggrieved nation; is that correct?

Ms. BELLO. That is correct, Mr. Pease.

Mr. PEASE. All right.

Ms. BELLO. The other approach that we are tentatively exploring and on which we would like the advice of the subcommittee is the possibility that in the Superfund case, could reduce tariffs on the same products that are affected by the Superfund fee. That might mitigate disagreements about the size of the trade effects of the Superfund differential tax and might have the least possible adverse consequences to U.S. industry. But I stress that we are at a very preliminary stage. We have a special problem with Canada because of the tariff reductions in any event under the Free Trade Agree-

ment. And we very much welcome the subcommittee's advice and input as to our next——

Chairman GIBBONS. Would the gentleman yield for a question right on point there?

Mr. PEASE. Surely.

Chairman GIBBONS. The administration, as I understand it, does not now have the authority to offer compensation. They would have to come to the Congress to get that authority.

Ms. BELLO. That is absolutely correct, Mr. Chairman. When we agreed with the European Economic Community to enter into compensation negotiations, we were compelled to stress that, on its own, the executive branch could not provide such compensation, even if we agreed on it on a preliminary basis; that we would need legislative authority from the Congress.

We have fairly wide authority in the trade bill that you enacted last year, but it does not cover either of these situations. We will need new legislative authority.

Mr. PEASE. Finally, what is the situation with retroactivity? We have been dragging on now for over 18 months. If we reach a compensation package, will it attempt to cover the grievances, the excess cost of our trading partners, back to July 1987, or will it be prospective only?

Ms. BELLO. We would anticipate that it would be prospective only. Under the GATT, the general principle is not compensating for past damages, but coming into conformity with obligations and offsetting prospectively any trade mischief in which we have been found to have engaged.

Mr. PEASE. So the compensation is designed more as a penalty or an inducement to come into conformity in the first place, rather than a recovery of losses?

Ms. BELLO. It is not a penal-oriented system, Mr. Pease. It is a system that is designed ideally to liberalize trade internationally, or at least to offset through the provision of compensatory trade benefits any harm that you have wreaked.

Mr. PEASE. If I might, one final question.

Has any calculation been made about where the Superfund tax would be if you adjusted it to be revenue-neutral? Presumably, the U.S. domestic tax would have to go up, and the tax on imports would have to go down. Do you know where the figure is?

Ms. BELLO. Well, there are three choices in that respect. One is, of course, you could solely raise the domestic tax, and that obviously has domestic political problems. The second choice is that you could simply lower the import tax, and that obviously has budgetary problems. So our proposal has been to eliminate the differential at the revenue-neutral point, but I am not sure what that is. I presume we have calculated that.

Do you know, Mr. Carnes?

Mr. CARNES. I am afraid I do not, Mr. Pease.

Mr. PEASE. OK. Thank you, Mr. Chairman.

Ms. BELLO. I am sorry. Mr. Pease, I am advised it would be between 9½ and 10 cents.

Mr. PEASE. A common rate of 9½ to 10 cents for imports——

Ms. BELLO. Applicable equally to imports and domestic products.

Mr. PEASE. Thank you.

Chairman GIBBONS. Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman.

Mr. Carnes, you indicated in your testimony that last year was a record year in terms of collection of moneys through import fees, or through Customs user fees.

Mr. CARNES. That is correct.

Mr. CRANE. What is the differential between the actual cost to Customs of the service it provides and the moneys that actually were raised?

Mr. CARNES. The differential for fiscal year 1988 was about $70 million.

Mr. CRANE. And have we consistently through Customs generated excess revenues over their cost of operation?

Mr. CARNES. Mr. Crane, in the 2 years that the user fee has been in existence, it has generated an excess above and beyond our cost.

Mr. CRANE. So, in fact, it is an import tax, not a user fee?

Mr. CARNES. That is how the GATT panel finds it. That is correct.

Mr. CRANE. I mean, do we have difficulty with that definition by the GATT panel?

Mr. CARNES. I do not believe we do. The administration has come forward with a bill recognizing that there is some problem with our current program.

Mr. CRANE. Now, in previous years prior to the last two, did Customs generate excess revenues over the cost of their operation?

Mr. CARNES. Before 1986, we did not have a user fee of this magnitude. There were some small user fees within Customs that we collected. But, no, we did not. We did not exceed our cost.

Mr. CRANE. I see. Thank you very much.

Mr. CARNES. You are welcome.

Chairman GIBBONS. All right. Our next panel of witnesses are: The American Association of Exporters and Importers; Joint Industry Group; and National Customs Brokers & Forwarders Association. If they all will come forward, we will get on with this matter.

The American Association of Exporters and Importers, Mr. Handal.

STATEMENT OF PETER V. HANDAL, PRESIDENT, VICTOR B. HANDAL & BRO., INC., OFFICER AND DIRECTOR, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS, AND CHAIRMAN, AAEI TRADE POLICY COMMITTEE

Mr. HANDAL. Yes, Mr. Chairman. Thank you.

Mr. Chairman and members of the committee, my name is Peter Handal. I am president of Victor B. Handal & Bro., Inc., which is a New York-based importing and manufacturing company. I appear before you today in my capacity as an officer and director of the American Association of Exporters and Importers, and as chairman of its trade policy committee.

Our association consists of over 1,200 company members engaged in every aspect of international trade. Our members export, import, distribute, manufacture almost every product imaginable. Our members also include many companies which service the international trade community.

The AAEI appreciates the opportunity to present on behalf of its membership the association's views on the Customs user fees and the GATT.

We are here today to urge Congress to take this opportunity to end user fees for the entry of merchandise into the U.S. Customs territory. Even if a modified fee schedule is adopted, the inherent problems and unfairness will continue to contradict GATT and create insurmountable operational problems for the U.S. Customs, in our opinion.

The AAEI is in principle opposed to Customs user fees. The fees are little more than double taxation. The U.S. Customs Service is a tax collection agency which also functions to regulate trade. In its collection capacity, its role is analogous to the role of the IRS in collecting income taxes. To impose a user fee for the privilege of paying the required Customs duties is analogous to charging a taxpayer a fee for the privilege of filing an income tax return and paying his taxes.

The AAEI agrees with the General Accounting Office which concluded, "GAO does not believe there is merit in assessing user's fees for those formalities that are not voluntary, because these formalities protect the Nation as a whole."

The imposition of Customs user fees was not recommended by the President's private sector survey on cost control. As pointed out by the Grace Commission, Customs requirements for the formal and informal entry of merchandise are for the benefit of society as a whole. In addition, these functions also serve as a protection for the domestic industry.

User fees are also unnecessary as a fundraiser. For at least the past 5 fiscal years, Customs has returned $19 for every dollar it has received in appropriations. U.S. businesses that export and import are already paying quite substantially for these privileges.

Now, we would like to turn to the GATT panel report of November 17, 1987, which found that the U.S. user fees imposed for the regular importation of merchandise were "simply taxes on imports" and, as such, were inconsistent with the fundamental principles of the GATT.

AAEI does not take issue with the GATT panel finding, and, indeed, we warned Congress and the administration of such a finding in testimony both before and after the fee became effective.

The AAEI is convinced that a transaction-based fee proposal also has inherent problems. We urge that the fee be allowed to expire at the end of fiscal year 1989, or, as a lesser alternative, not be renewed after the September 30, 1990, expiration date.

The U.S. argued before GATT that "Changing to a transaction-based fee, which could have a protective effect on low-value importations, would lead to more problems for trade, not fewer."

The current ad valorem system, as we have heard earlier, favors the importer who brings in lower-value items which require extensive Customs processing, such as quota merchandise.

On the other hand, the transaction-based fee turns the tables. An importer of lower-value goods would pay a far greater, proportionally enormous sum for the same entry procedure than would an importer of high-value goods.

In addition, a transaction-based fee would prompt a greater consolidation of entries, resulting in less revenue from the fee, but the same amount of work for Customs. Again, the United States argued this point before the GATT panel.

Another problem arises in that Customs incurs costs even from the entry of duty-free and, in some cases, fee-exempt merchandise under the United States-Canada Free Trade Agreement, the Israel-United States Free Trade Agreement, the Caribbean Basin Initiative, the Generalized System of Preferences, and HTS chapters 98 and 99.

This raises a number of questions. Should the fees be imposed across the board, negating policy objectives? Or should exemptions remain to the modified fee, in effect causing importers on non-fee-exempt items to subsidize Customs commercial operations? Should the new fee be based on the complexity of the transaction? Such a fee would, in theory, be more directly linked to the actual cost of entering the merchandise, which is the GATT principle. But it would cause major problems in HTS chapter 98 entries where U.S. material is sent abroad for further processing.

These questions emphasize the fact that the transaction-based user fees are fair to no one, not to the United States and certainly not to the U.S. importer.

With regard to the GATT, there are a number of GATT inconsistencies which will remain even if the current fee is modified. First, whether ad valorem or transaction-based, user fees on imports are not consistent with the objective of article VIII(b) of the GATT, that the contracting parties recognize the need for reducing the number and diversity of fees and charges.

Second, as the GATT panel ruled, "Exemptions to the user fee are 'GATT' illegal' to the extent that they result in overcharging nonexempt imports." Since it is extremely doubtful that Canada will allow the United States unilaterally to modify the FTA, any modified fee also will violate the GATT.

A third GATT inconsistency also arises from the exemptions. Article I of the GATT, known as the MFN clause, states that all nations must receive the same benefits provided to any one country. U.S. exemptions for the CBI countries or the LDDC's would probably be found GATT-illegal.

Fourth, and probably most important, the GATT panel ruling seems to indicate that any user fee on the regular importation of merchandise is an ordinary tax on imports, and that they are neither desired by the importers nor add commercial value to the goods and are, therefore, not GATT-consistent.

Two operational points. First, the AAEI doubts that Customs will be able to monitor and collect efficiently any transaction-based fee. Customs' emphasis on automation in order to do more with limited resources should reduce the cost of import transactions.

On the other hand, a transaction-based fee would necessitate more Customs personnel or more hours from existing personnel in order to calculate and confirm what type of entry is being made and to determine its cost. This would lead to a greater cost per entry. But increasing automation would engender constant adjustments to the fee schedule as new programs are developed to make Customs entry easier and less expensive.

A transaction-based fee would increase with inflation, also creating the need for constant tinkering with the fee schedule. We submit that neither Congress nor Customs has the resources, in either personnel or patience, in sufficient quantity to handle properly this unnecessary user fee.

Second, the trade community, which will bear the burden of any modified fee, must be a full partner in setting the fee schedule, should we come to that. Members of the AAEI have yet to be shown any new user fee, and the trade community, we feel, should be allowed to provide input before the new fees become effective.

In conclusion, Mr. Chairman and members of the subcommittee, the members of the AAEI are opposed to the continuation of the Customs user fee. The fee, as found by the GATT panel, is nothing more than a tax on imports, levied on importers who do not benefit from the Government-required Customs services.

Even if the fee were to be modified, U.S international obligations, fundamental fairness, and the inability of U.S. Customs to administer the fee render its continuation more costly in economic and political terms than its rescission.

The GATT is quite clear in its mandate that charges, taxes, and fees on imports can neither cause the favorable treatment of one country over another, nor exceed the "cost of services rendered." A modified U.S. Customs fee will not measure up to those standards. The United States trading partners then need only to initiate another GATT panel to be entitled to the compensation, which we heard discussed earlier. Obviously, then, there will be no net increase in budget revenues, which was essentially the idea originally.

The members of AAEI recognize the budgetary pressures that exist, but, on balance, we urge Congress to take this opportunity to—if I can paraphrase some testimony to Congress last week—"to call a duck a duck" and to allow this tax on imports to expire.

Thank you, Mr. Chairman, for the opportunity to express our views. We stand ready to assist the committee in its endeavors on this issue.

[The statement of Mr. Handal follows:]

TESTIMONY OF AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

PETER V. HANDAL

Good morning, Mr. Chairman, members of the Committee. I am Peter V. Handal, President of Victor B. Handal & Bro. Inc., a New York based importing and manufacturing concern. I appear before you today in my capacity as an Officer and Director of the American Association of Exporters and Importers (AAEI), and Chairman of its Trade Policy Committee.

The Association consists of over 1,200 company members engaged in every aspect of international trade. AAEI members export, import, distribute and manufacture chemicals, electronics, textiles and apparel, machinery, footwear, food, and automobiles, wines and specialty items. AAEI members also include many companies which serve the international trade community, such as customshouse brokers, freight forwarders, banks, attorneys and insurance carriers.

AAEI appreciates the opportunity to present, on behalf of its membership, the Association's views on Customs User Fees and the GATT. AAEI is a strong advocate of the multilateral process to resolve trade problems. It has long been on record that the U.S. should honor its international obligations, especially those imposed by the GATT.

AAEI is here today to urge Congress to take this opportunity to end user fees for the entry of merchandise into the U.S. Customs' territory. In principle and in practice, the fees are inconsistent with U.S. international obligations. Even if a modified fee schedule is adopted, the inherent problems and unfairness will continue to contradict the GATT and create insurmountable operational problems for U.S. Customs.

AAEI, in principle, is opposed and will always oppose Customs user fees. The fees are little more than double taxation for government mandated services. The U.S. Customs Service is a tax collection agency which also functions to regulate trade. In its collection capacity, its role is analogous to the role of the Internal Revenue Service in collecting income taxes. To impose a "user fee" for the privilege of paying the customs duties required to be deposited as a condition of entry of imported merchandise is analogous to charging a taxpayer a fee for the privilege of filing an income tax return and paying income taxes. This is a concept which clearly would offend the taxpaying public; it is no less offensive to the importing public.

The Customs' clearance of imported merchandise, inspection of merchandise, assessing duty, and insuring it is not prohibited from importation by law or regulation, is not a "service" to the importer. It is an obligation of the Customs Service to the public to carry out these functions and to insure that the correct amount of customs duty is deposited, and that no law is violated by importation. These functions are no more a "service" to the importer than is the processing of an income tax return and collection of the income tax payable. In each case, the function is a requirement of the law, carried out by a government agency for the general welfare. AAEI agrees with the General Accounting Office which concluded, "GAO does not believe there is merit in assessing user's fees for those formalities that are not voluntary, because these formalities protect the nation as whole." GAO Report OC-9-85-1.

The Administrative Conference of the U.S., in their 1987 report on user fees, clarified the standard to be applied when a government service is proposed to be funded by "user" fees. The Conference stated that if the service gives only incidental public benefit, then it should be funded out of special fees by those who require the service to be performed. The argument that U.S. Customs' "services" primarily benefit importers and only give incidental benefits to the general public, is without merit. Customs was established in 1789 to protect the borders and revenue of the U.S. Without Customs, the flow of all types of goods into the U.S. - genuine, counterfeit, beneficial, dangerous - would be unimpeded. Legally entering merchandise and paying Customs duties is not a privilege. It is required by law. Those who choose to import are taxed, in the form of duties (tariffs), for doing so, with billions of dollars collected benefitting the General Treasury. As such, the cost of this operation should be borne by the general revenue and not by double taxation of the importer. In each case, it is not a desired service, but a requirement from which the importer receives no benefit.

The imposition of such user fees was not recommended by the President's Private Sector Survey on Cost Control, in the Report of the Task Force on User Charges. As pointed out therein by the Grace Commission (at page 196), Customs passenger processing and requirements for the formal and informal entry of merchandise are for the benefit of society as a whole. These functions protect the revenue, deter smuggling and the importation of contraband, and are necessary to enforce the laws. As the Report further observed, the formal and informal entry of goods and entry by mail are services that support the general economy and for which a fee -- the duty on goods or postage -- has already been paid. In addition, these functions also serve as a protection for domestic industry.

The economics of the situation weigh as heavily against continuation of the user fees, as the weight of opinion. In Fiscal Year 1988, Customs collected over $16 billion from commercial operations, a little over $600 million of which is attributable to the user fees. For FY 1989 Customs has projected receipts of $17.8 billion. For at least the past five fiscal years, Customs has returned $19 for every dollar it received in appropriations. U.S. businesses that export and import are already paying, and quite substantially, for those "privileges". There simply is no need or justification for these additional taxes disguised as user fees. (For the new administration's view on user fees see Attachment A).

AAEI understands that political reality overrides principle on occasion. The need to reduce the U.S. budget deficit without raising taxes can place undue pressure for adoption of unnecessary measures. The Customs user fees, despite the inconsistencies with the GATT, were imposed in such a climate. Political pressures, however, should not override U.S. international obligations or fundamental fairness. The GATT Panel Report of 17 November 1989 on page 39 found that the U.S. user fees, imposed for the regular importation of merchandise were "simply taxes on imports" and as such were inconsistent with the fundamental principles of the GATT.

AAEI does not take issue with the GATT Panel finding, and indeed, warned Congress and the Administration of such a finding in testimony before and after the fee became effective. Despite the GATT Ruling, the Administration now seeks to bring the MPF into conformity with the GATT by changing the ad valorem fee to a transaction-based fee. In fact, the Administration and Customs first proposed a transaction-based fee in 1983 before Congress devised and implemented the current ad valorem fee.

TRANSACTION-BASED FEE

AAEI is convinced that a transaction-based fee proposal also has inherent problems. Current U.S. international obligations, the question of fairness to high volume importers of lower value goods, and the inability of the Customs Service to administer effectively preclude the imposition of such a fee system. AAEI urges that the MPF be allowed to expire at the end of FY 1989 or as a lesser alternative, not be renewed after the 9/30/90 expiration date.

Fairness - On page 24 of the GATT Panel decision, the U.S. is cited, in arguing its case for the ad valorem fee, as stating, "Congress had chosen a low rate that would not interfere with trade. Changing to a transaction-based fee, which could have a protective effect on low-value importations, would lead to more problems for trade, not fewer. With the increased consolidation of entries that a transaction-based fee would generate, the pre-entry fee could increase still further." (Emphasis added).

The current ad valorem system favors the importer who brings in lower value items which require extensive Customs processing. An example is the importer who brings in quota merchandise. Due to pressure from domestic industry, the U.S. has an extensive quota system in place for certain imports. U.S. Customs requires exacting procedures to enter even a sample shipment under quota. However, under the ad valorem fee an importer would pay only $.85 for a shipment worth $500, even if the shipment took a week to clear and involved 5 Customs-manhours. Non-quota merchandise, regardless of value, usually can be entered and released in a matter of hours. However, if the merchandise is worth $1 million, the importer pays $1700 for less Customs "service".

The transaction-based fee turns the tables. An importer of lower value goods would pay a far greater, proportionally enormous sum for the same entry procedure, than would an importer of high value goods. For example, a $50 fee for each entry would not impede someone bringing in a $1 million shipment. It translates into only .05% ad valorem, .12% lower than the current fee. However, the same fee on a $2500 shipment requires the importer to pay a 2% surcharge, well over ten times the current 0.17%. A quick calculation shows that anyone entering a shipment worth over $35,353 (assuming $50/entry fee) will benefit from a transaction-based fee compared to the current fee. Anyone importing goods under that amount will pay much more than they are paying now for the same Customs "service". The transaction-based fee is obviously unfair and discriminatory to the importer of lesser value goods.

In addition, a transaction-based fee would prompt a greater consolidation of entries, resulting in less revenue from the fee, but the same amount of work for Customs. One of the U.S. arguments before the GATT Panel, summarizes the problems with the transaction-based fee:

> For instance, a transaction-based fee assessed at a flat rate per entry might avoid valuation of individual entries. However, countries sharing a land border with the United States would benefit disproportionately from a fee assesed on that basis, as they made extensive use of consolidated entry procedures permitting entry of multiple shipments on one entry form. Furthermore, the calculation and collection of duties amounted to a minor workload factor in entry processing; determination of the proper classification for a shipment was a more complex process, and was required for all entries regardless of the relevant rate of duty. The trend in U.S. Customs operations was away from transaction-by-transaction accounting, and towards increased automation of operations, direct electronic data transfer and funds transfer between Customs, importers and brokers, and periodic settlement of accounts between Customs and importers. A transaction-based fee ran counter to this trend, which had been driven by the need to process increasing imports with limited Customs resources. In addition, a flat-rate or transaction-based rate makes it impossible to know whether fees would exceed the cost of services rendered. Measuring the cost of each Customs transaction as it happened would create a trade barrier in itself, and setting a schedule of transaction fees would cause trade distortions as transactions were manipulated to minimize fees. Each fee-avoidance action would necessitate a fee-adjustment response by the Treasury Department or Congress.
>
> GATT Panel Report at 13.

The unfairness of new transaction-based fees is manifest in other ways, as well. How can a fee be structured so that those liable for the user fees are not paying the cost of processing the goods imported from countries which will be exempt from the fee? Customs incurs costs even from the entry of duty-free, and in some cases, fee-exempt merchandise under the U.S.-Canada Free Trade Agreement (CFTA), Israel-U.S. Free Trade Agreement (IFTA), the Caribbean Basin Initiative (CBI), the Generalized System of Preferences (GSP) and HTS Chapters 98 and 99 (formerly Schedules 8 and 9 of the TSUS). Despite the processing costs, duty-free and fee-exempt status are granted under these programs to further policy interests, domestic and foreign, and the business competitiveness of the U.S.

Should the fees be imposed across the board, negating policy objectives and, for example, effectively taxing non-profit institutions such as museums which bring in exhibition material duty-free under Chapter 98? Or should exemptions remain to the "modified" fee, in effect causing importers on non fee-exempt items to subsidize Customs commercial operations? Should the new fee be based on the complexity of the transaction? Such a fee would, in theory, be more directly linked to the actual cost of entering the merchandise. But it would cause major problems in HTS Chapter 98 entries, where U.S. material is sent abroad for further processing. The U.S. made portion of the material is not dutiable upon importation of the completed product. Entries under HTS 9802.00.8000 usually are the most costly and complex, indicating the need for a higher fee. However, higher fees would discourage the use of U.S. origin components in these products and may cause the entire product to be made overseas, costing U.S. jobs.

These questions emphasize the fact that transaction-based user fees are fair to no one, not the U.S. and certainly not the U.S. importer. Continuation of the ad valorem fee will cause the U.S. to pay compensation, as per the GATT Panel ruling, to the EC and Canada, the complainants in the GATT case. AAEI believes there is no choice but to allow the fee to expire.

U.S. International Obligations - There are a number of GATT inconsistencies which will remain even if the current fee is modified. First, whether ad valorem or transaction-based, user fees on imports are not consistent with the objective of Article VIII(b) of the GATT, that the contracting parties recognize the need for reducing the number and diversity of fees and charges. U.S. fees on imports, to fund harbor dredging, commercial operations or trade adjustment assistance programs, fly in the face of Article VIII and may prompt other industrialized countries, most of who look to the U.S. as leader in trade, to impose or increase the number and amounts of their fees on U.S. exports.

Second, as the GATT Panel ruled (p. 59) and the USTR's Office recognized in a briefing memo which summarized the decision, "exemptions to the user fee are 'GATT illegal' to the extent that they result in over-charging non-exempt imports." (USTR Memo at 2, See Attachment B). There is little expectation that all the exemptions to the user fee can be legislated away. A prime example is the U.S.-Canada Free Trade Agreement which phases out the U.S. user fee on imports from Canada by 1993. Since it is extremely doubtful that Canada will allow the U.S. to unilaterally modify the FTA, any modified fee also will violate the GATT.

A third GATT inconsistency also arises from the exemptions. Article I of the GATT, known as the MFN clause, states that all nations must receive the same benefits provided to any one country. Certain lesser developed developing countries (LDDC's) and CBI countries are exempt from the current fee due to longstanding U.S. foreign economic policies. Three other GATT members raised the argument that the U.S. exemption of LDDC's and CBI countries violates Article I. The GATT Panel did not actually rule on the arguments becaude the three were not parties to the dispute but stated, "No answer in opposition to these legal claims was given, nor was the Panel aware of any that could be given." (emphasis added). GATT Panel Ruling at 58. The U.S. is bound to face another GATT Panel, and in AAEI's opinion, bound to lose again if a modified user fee contains any exemptions.

Fourth, and probably most important, the GATT Panel Ruling can be interpreted to state that <u>any</u> user fee on the regular importation of merchandise is an ordinary tax on imports and therefore not GATT-consistent. Although the parties to the GATT case did not argue the point, the panel held:

> Granted that some government regulatory activities can be considered as "services" in an economic sense when they endow goods with safety or quality characteristics deemed necessary for commerce, most of the activities that governments perform in connection with the importation process do not meet that definition. They are not desired by the importers who are subject to them. Nor do they add value to the goods in any commercial sense. Whatever governments may choose to call them, fees for such government regulatory activities are, in the Panel's view, simply taxes on imports. (Emphasis added).
>
> GATT Panel Report at 39.

AAEI does not believe that the U.S. is willing to contravene the GATT's prohibition on taxes on imports.

The U.S. has other international obligations besides the GATT. Treaties with other countries, that reduce tariffs and grant duty-free treatment, such as the U.S.-Canada Free Trade Agreement and U.S.-Israel Free Trade Agreement are important to the U.S. foreign relations. Unilateral preference programs such as the GSP and CBI foster economic as well as political stability of U.S. allies. The imposition of any type of import fee violates not only the written provisions of these laws, but also their spirit. AAEI does not believe that Congress or the Administration would allow short term budgetary pressures to remove the U.S. long term commitment to economic expansion.

<u>Customs Inability to Administer User Fees</u> - The *ad valorem* user fee is easy for U.S. Customs to administer but, according to the GATT, cannot remain in place. The administrative cost of transaction-based fee, beside its inequities and inconsistencies with U.S. international obligations, will far outweigh the revenue benefit to the U.S. treasury. As the U.S. argued before the GATT, and the GATT panel recognized, "the trend in U.S. Customs operations [is] away from transaction-by-transaction accounting and towards increased automation". GATT Panel Report at 13. Well known to the trade community, Congress, and the administration is Customs' emphasis on automation in order to do more with limited resources. Recent Customs automation programs like electronic data transfer (ANS, EDIFACT), triangular processing, automated payment exchange (ACH) and periodic entry should reduce the cost, if not the complexity, of import transactions.

A transaction-based fee, however, would necessitate more Customs personnel or more hours from existing personnel in order to caluclate and confirm what type of entry is being made and its cost. This would, in itself, lead to a greater cost per entry. Increasing automation would engender constant adjustments to the fee schedule by Customs or Congress as new programs are developed to make Customs entry easier and less expensive.

A transaction-based fee would increase with inflation, as salaries and equipment costs increase, also creating the need for constant tinkering with the fee schedule. AAEI submits that neither Congress nor Customs has the resources, in either personnel or patience, in sufficient quantity to offset the receipts from this unnecessary user fee. As a reminder, Customs collected over $16 billion from importers in FY 1988, while spending about one-nineteenth of that amount to do so. The trade community already contributes a considerable amount to the U.S. General Treasury, far out of proportion to the benefits it receives from Customs "services". Increased appropriations for Customs commercial operations has resulted and will continue to result in increased revenue; the Customs Service is far from the point of diminishing returns. Transaction-based user fees will add to Customs' cost, and if challenged again in the GATT, may ultimately cost the U.S. in compensation or greater fees on U.S. exports. The choice between ad valorem or transaction-based fees is actually no choice at all. AAEI believes that recission of the user fee is the sole alternative.

MODIFIED CUSTOMS FEES

If the Administration and Congress persist in the imposition of a modified Customs User Fee, AAEI believes that any new fee schedule must be consistent with U.S. international obligations, must not burden one class of importers more than another and must be used to cover all the costs of Customs mandated commercial operations.

The trade community, who will bear the burden of any modified fee, must be a full partner in setting the fee schedule. The members of AAEI have yet to be shown any new user fee schedule. Whether Congress sets the fees or Customs, the trade community must be allowed to provide input before the new fees become effective. In the meantime there are rules that, if not followed, hold the threat of additional GATT Panel action. Any new fees must:

1. Not include the cost of Customs operations not directly related to processing the individual entry;
2. Not allow importers of merchandise non-exempt from the fee to bear the cost of processing fee-exempt merchandise.
3. Not allow importers of lesser value to pay a proportionally greater amount than importers of higher value merchandise.
4. Include the cost of all Customs mandated services.

Prohibition Against Non-Related Costs - The GATT Panel concluded that fees cannot be levied in excess of the cost of Customs processing for the individual entry in question. Specifically, the cost of airport passenger processing, the collecting and forwarding of export documentation, and the Customs International Affairs Office operations are not part of the 'cost of services rendered' and cannot be funded by a U.S. merchandise processing fee. Post-entry Customs operations such as audit and recalls are not part of entry processing and their cost similarly cannot be included when calculating the fee.

Prohibition Against Fee Exempt Merchandise - As detailed above, the GATT does not allow merchandise from one country to incur greater charges from that of another. Even fee-exempt merchandise incurs processing costs. Importers of non-exempt merchandise should not subsidize Customs operations for importers of fee-exempt goods.

Prohibition Against Unfairness - There should be no relative cost benefits to any one group of importers. The ad valorem fee causes the importer of high value goods to bear a much greater burden of the cost of Customs commercial operations. A flat transaction-based fee discriminates against importers of lower value goods. Any "user fee" is inherently unfair to importers, who draw no benefit from government mandated services. Importers must not be subjected to further cost burdens because of their choice of business.

The Customs user fee, and even any modified fee, already have increased the cost to importers beyond the basic charge. Many customs brokers charge an additional fee to pay and account for the user fee. And despite the fee, importers must pay contractors hired by Customs in order for goods to be inspected, as required by Customs, at Centralized Examination Stations. If a Customs user fee is unavoidable, then it must be fair in application and cover the costs of all Customs-mandated operations.

CONCLUSION

Mr. Chairman, members of the Subcommitee, the members of AAEI are opposed to continuation of the Customs "user fee". The fee, as found by the GATT Panel, is nothing more than 'tax on imports' levied on importers who do not benefit from government required 'Customs Services'. The fee also is unnecessary as U.S. Customs is a revenue producing agency, second only to the IRS. Customs consistently returns close to $20 for every $1 it receives in appropriations and has not reached the point of diminishing returns.

Even if the fee were to be modified, U.S. international obligations, fundamental fairness, and the inability of U.S. Customs to administer the fee, render its continuation more costly in economic and political terms than its recission.

The GATT is quite clear in its mandate that charges, taxes, and fees on imports can neither cause the favorable treatment of one country over another nor exceed the 'cost of services rendered'. A modified U.S. Customs fee will not measure up to those standards. Canada, through the FTA, has an exemption to any U.S. import fee that other countries do not enjoy. That exemption will increase the Customs fee to importers of non-Canadian goods, thus exceeding he cost of the individual entry in question. U.S. trading partners then need only to initiate another GATT Panel to be entitled to compensation, in form of lower tariffs on their products. Obviously, there will be no net increase in budget revenue. Further, the U.S. stature as the leader in world trade expansion will be diminished.

If the Administration and Congress persist in continuing the fees, or in modifying the current fee, AAEI urges that the fee be implemented consistent with the GATT; that it be fair in its application, so that all importers bear the same burden; that it be used to cover the entire cost of Customs mandated operations; that Customs be held accountable for its use on commercial operations; and that the trade community be a partner in formulating new fees.

The members of AAEI recognize the budgetary pressures, but on balance urge Congress to take this opportunity to allow the fee to expire. Thank you, Mr. Chairman for the opportunity to express the views of the 1200 members of AAEI. The Association stands ready to assist the Committee in its endeavors on this issue.

ATTACHMENT A

A24 THE WALL STREET JOURNAL FRIDAY, JANUARY 20, 1989

Any Big Move to Boost Revenue Is Virtually Ruled Out by Darman

Nominee for Budget Post Specifically Takes Aim At Gasoline-Tax Issue

By Alan Murray
And David Wessel
Staff Reporters of The Wall Street Journal

WASHINGTON – Budget Director-designate Richard Darman fleshed out George Bush's lips, arguing that virtually any sizable revenue-raising measure would violate the president-elect's pledge of "no new taxes."

Mr. Darman specifically said the new administration wouldn't support an increase in the gasoline tax, even though in certain circumstances it might be considered a "user fee" rather than a tax. He also said Mr. Bush's pledge ruled out such "loophole closing" measures as reducing the tax exemption for employer-provided fringe benefits and reducing the deduction for home mortgages.

But Mr. Darman made one notable exception to the no-tax rule: He said regulatory changes by the Treasury Department in the tax treatment of certain high-risk "junk bonds" might not be considered a new tax, in his view. The Treasury has broad authority to make such regulatory changes.

Richard Darman

He also indicated that the tax increases in President Reagan's budget plan – which include extending the telephone excise tax and bringing state and local employees under the Medicare payroll tax – would be acceptable to the new president.

Mr. Darman made the comments yesterday at his confirmation hearing before the Senate Government Affairs Committee. Much of the questioning by senators represented an attempt to find cracks in the president-elect's no-tax pledge.

In comments that are certain to add a new term to Washington budget jargon, Mr. Darman repeatedly said any revenue proposal must pass the "If it looks like a duck" rule. If it looks like a tax to ordinary Americans, then it is a tax, and the new president will oppose it, he said.

"At the point you get a significant dollar amount, it's virtually guaranteed the American people will view it as a tax, and it will flunk the duck test," he said.

The duck comment became a recurring theme in the daylong confirmation hearing. Democratic Sen. Joseph Lieberman of Connecticut questioned whether Mr. Darman was engaging in "high-level quackery." And later, committee Chairman John Glenn (D., Ohio) presented Mr. Darman with three rubber ducks.

Mr. Darman, who a year and a half ago argued that a political solution to the budget deficit must involve tax increases as well as cuts in Social Security benefits, said he has changed his views. "There's more chance of finding an agreement on the spending side than I thought many months ago," he told reporters.

And he said "his strong suspicion" is that the Bush administration won't change the economic assumptions underlying President Reagan's budget, even though those assumptions have been criticized as excessively optimistic.

The future budget director also sought to play down concerns about the cost of rescuing insolvent savings and loans, which some experts say could exceed $100 billion. Mr. Darman said that $80 billion was probably a reasonable estimate of the total cost of rescuing insolvent thrifts, but that "probably $40 billion worth has already been done." The remaining "amount to be worked out may be on the order of $45 billion or $50 billion," he said.

He also said the savings and loan insurance fund needs to be separated from the Federal Home Loan Bank Board, which oversees the thrift industry. The Treasury Department is working on a plan that is likely to propose giving control of the thrift insurance fund, called the Federal Savings & Loan Insurance Co., to the Federal Deposit Insurance Corp., which insures deposits in commercial banks.

The committee will complete its questioning of Mr. Darman Monday. Full Senate approval of his nomination could come as early as Wednesday.

BUSH AIDE INSISTS ON NO TAX RISES, EVEN IN DISGUISE

BUDGET CHIEF'S HEARING

Darman Tells Panel the New Administration Will Not Hide Behind Labels

By DAVID E. ROSENBAUM
Special to The New York Times

WASHINGTON, Jan. 19 — Richard G. Darman, the chief architect of President-elect George Bush's budget policies, told Congress today that the new administration opposed all measures the public might perceive as tax increases and would not disguise tax proposals in euphemistic terms.

In his first public statement since he was chosen by Mr. Bush two months ago to be budget director, Mr. Darman said the Bush administration would not, for instance, try to call a gasoline tax increase a "user fee" or the abolition of common tax deductions "definitional changes."

No Camouflaging, He Suggests

The firm stance against tax increases by the man who will direct the new administration's negotiations with Congress over reducing the budget deficit could have been a tactical ploy. But it seemed to foreclose the possibility that camouflaging new taxes by calling them something else might be a way to reconcile deficit reduction with Mr. Bush's campaign pledge of "no new taxes."

That speculation has been reported in The Wall Street Journal, The New York Times and other publications, and Mr. Darman's statement today seemed to be intended to counter such speculation.

Mr. Darman made his forceful and sometimes colorful statements a day before Mr. Bush's inauguration as the 41st President of the United States.

Less Money for Pentagon

Mr. Darman made these other points in testimony at a confirmation hearing before the Senate Governmental Affairs Committee:

¶The Pentagon will have to revise its projections for a 2 percent increase in military spending, beyond increases to make up for inflation, each year over the next five years because not enough money will be available.

¶No significant new money will be spent on education, although Mr. Bush will try to highlight "more effective education."

¶Mr. Bush will send Congress his own budget plan by the middle of next month. It will be quite detailed and will provide "a very clear sense of what the Bush priorities are."

¶The Bush administration will accept the relatively optimistic economic forecasts of the Reagan Administration, but such projections are basically worthless and budgets would be more meaningful if they had a range of economic assumptions.

¶Federal budgets should cover two

Continued on Page A12, Column 2

N.Y. TIMES 1-20-89 A1

Bush Budget Architect Says No New Taxes, Whatever Their Names

Continued From Page A1

years, not one as they do now.

¶He is concerned about the large sums needed to resolve the crisis in the savings and loan industry and to repair and clean up plants that make nuclear weapons. He will meet Monday with James D. Watkins, the Energy Secretary-designate, to discuss the weapons plant problems.

Labor Nomination Advances

Meanwhile, the Senate Labor and Human Resources Committee voted unanimously this afternoon to approve the nomination of Elizabeth Hanford Dole to be Secretary of Labor. But at a two-hour hearing, many tensions surfaced over issues that will be debated in the new Congress, like child care, parental leave and pensions.

For his part, Mr. Darman was widely praised by the senators at his hearing. The committee plans to vote Monday on his confirmation, and approval by the full Senate is expected later next week.

At the outset of the hearing, the committee chairman, John Glenn, Democrat of Ohio, asked Mr. Darman whether some taxes might be defined "in strange and wondrous ways."

Mr. Darman replied that Mr. Bush "meant no new taxes as it would ordinarily be understood by ordinary Americans."

'If You Apply the Duck Test'

He suggested what he called "the duck test": "If it looks like a duck, walks like a duck and quacks like a duck, it's a duck."

Some people, he said, might call a gasoline tax increase a user fee because the money would be used for highway construction and repair. "But ordinary Americans see it as a tax increase," he said. "It's a tax increase if you apply the duck test."

Mr. Darman said he might advise Mr. Bush to violate the test in "an extreme case" like war, but he added, "I do not now foresee the circumstances in which I should or would do so."

Mr. Darman said he hoped to reach a "bipartisan agreement" with Congress to reduce the budget deficit to $100 billion in the next fiscal year as the budget-balancing law requires. But he said the Department of Defense and other agencies should be making "contingency plans" in case such an agreement cannot be reached and the automatic spending cuts required by the law go into effect next fall.

But automatic cuts would be viewed as a defeat for the Bush Administration, and Mr. Darman, a master tactician, clearly does not intend for Mr. Bush to suffer an early defeat.

"I think it's very important for a Presidency to establish a degree of the perception of its strength," Mr. Darman said. "If you start an Administration with a highly visible, highly advertised loss, you permanently weaken that Presidency for whatever else it might do."

Mrs. Dole was introduced at her hearing by her husband, Senator Bob Dole of Kansas, the Republican leader, who was a major Bush rival for the Republican Presidential nomination. The Senator gazed out at the bevy of television cameras and said, "If I'd had this much coverage in the primaries, I'd be working on my inaugural address."

Despite the unanimous vote in her favor, Mrs. Dole and committee Democrats clearly did not agree on some key issues. Democrats, for instance, argued strongly for legislation to force companies to give new parents unpaid leave, but Mrs. Dole warned that she would oppose any proposal that might "slow economic growth and limit the opportunity for jobs."

Mr. Bush's choice for Labor Secretary also resisted suggestions that the Congress should establish minimum standards of quality for any day care programs aided by the Federal Government. And she warned that many ideas that would protect the pension rights of workers might end up discouraging companies from offering pension plans at all.

ATTACHMENT B

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

November 17, 1987

BRIEFING MEMORANDUM

TO: AMBASSADOR YEUTTER
AMBASSADOR SMITH
AMBASSADOR HOLMER

FROM: Judy Bello JB

Prepared by: Amy Porges AP

SUBJECT: User Fee Decision: You win some, you lose some

Today, we received the panel's decision in the case against the U.S. customs user fee statute. As you know, the panel held against us. This memo summarizes the excerpts of the text which we have received from Geneva, and gives a preliminary assessment of how we could fix the fee to make it GATT-consistent. We will have the full text late Wednesday.

The panel report will be circulated November 25 to all GATT contracting parties. It has missed the deadline for consideration at the December 1 CP Session. The next scheduled GATT Council is next February.

We have already informed OMB, Treasury and Customs of the decision, and will be working closely with them on legislative strategy. The panel decision comes in the middle of the conference process on the budget bill, which would be a natural vehicle for any user fee fix.

Panel Findings and Possible Fixes

We had sought to justify the user fee under GATT Article VIII, which permits assessment of a fee "approximately equivalent to the cost of services rendered." We argued that our fee (an ad valorem fee paid into a trust fund, which averages out Customs costs over all entries) was GATT-consistent if the total amount collected did not exceed the total cost of Customs commercial operations.

-- The panel found that "cost of services rendered" means the cost of services rendered to the individual importer paying the fee. Thus, the fee on each entry of goods cannot exceed the cost of processing that entry, and the U.S. ad valorem fee is GATT-illegal to the extent fees are levied in excess of such costs.

It may be possible to fix this particular problem by simply costing out particular types of Customs transactions, and setting fees equal to these costs.

This finding also means that the one percent import fee to fund TAA proposed in the Senate trade bill is clearly GATT-illegal. It may also rule out a number of other ad valorem fees that are still in the proposal stage (e.g., a Census statistical fee).

The panel found that the user fee exceeds the cost of services rendered (and is GATT-illegal) to the extent that it pays for

1. airport passenger processing;

2. collecting and forwarding of export documentation;

3. the budget of the Customs International Affairs section (Customs attaches abroad);

4. Customs activities for the first two months of fiscal 1987 (when the user fee was not being charged); and

5. customs processing of imports that are exempt from the user fee.

-- This means that the exemptions to the user fee are GATT-illegal, to the extent that they result in over-charging non-exempt imports.

-- The top four items on this list can be taken care of administratively by re-doing the Customs budget. The budget authorization and appropriations bills for Customs would also need to be altered. The exemptions are provided in the statute and would have to be changed by legislation.

India had raised an Article II [illegible] argument on the user fee exemptions, but the panel chose not to address it. Also, the user fees collected in FY 1987 will be used to pay for Customs activities in FY 1987. While the way [illegible] was challenged, but the excerpts we have of the panel report [illegible] because this issue. The panel may have also found that our Customs user fee is an ordinary tax on imports. If this is the case, it may be impossible to fix the fee to make it GATT-consistent.

cc: Bill Barreda

Chairman GIBBONS. Thank you.

I kind of agree with you, we ought to let it expire, but we do not have a choice there. When you have got people that say we have got to have money but we cannot have taxes, we just got a problem.

OK. The Joint Industry Group, please, Mr. Collins.

STATEMENT OF STEPHEN J. COLLINS, DIRECTOR, ECONOMIC AND INTERNATIONAL AFFAIRS, MOTOR VEHICLE MANUFACTURERS ASSOCIATION ON BEHALF OF THE JOINT INDUSTRY GROUP

Mr. COLLINS. Good morning, Mr. Chairman. My name is Stephen Collins, and I am the director of economic and international affairs with the Motor Vehicle Manufacturers Association. However, I am appearing here today on behalf of the Joint Industry Group, which is a business coalition of 100 trade associations, business firms, and professional firms involved in international trade with an interest in Customs matters.

I want to thank you for the opportunity to appear before the subcommittee as you examine the problems posed by the current Customs user fees. This subcommittee is aware that the Joint Industry Group has been and remains opposed to the concept and the imposition of Customs user fees for those services, which bestow no special benefit on importers. We have particularly and consistently opposed Customs user fees for services, or actually Customs formalities, required by the Customs Service under U.S. trade laws and regulations for the general public good.

We are aware that this view did not prevail, nor were our views that the proposed Customs user fees would be considered to be in conflict with the provisions of the GATT found to be compelling. However, it is useful to review this history in order to assure that any change in the Customs user fee provision not further compromise the international position of the United States.

A part of the history of the current Customs user fee system is that its enactment was driven less by the merits of the proposal than by the need for additional revenue. The Joint Industry Group is aware that this committee has been faced with few options in responding to the budgetary issues regarding Customs user fees. The fiscal demands for maintaining revenue remains. Therefore, any immediate change which significantly reduces the current level of revenue produced by the Customs user fees will undoubtedly be resisted by the administration as well as in the Congress.

Nonetheless, the Customs user fees are scheduled to terminate in fiscal year 1990. It is within this overall context that we have sought to develop a proposal that would be helpful to the subcommittee in conforming the Customs user fees to the U.S. obligations under the GATT.

The core of the GATT panel finding on the U.S. Customs user fee is that the ad valorem structure is not demonstrably related to the actual costs of the services being performed by the U.S. Customs Service. GATT article VIII requires, in fact, that such fees be related to the costs of the services performed.

The absence of any factual basis for assessing Customs user fees has made it difficult for the business community and the Congress to deal with this issue from the beginning. None of the various schedules of Customs user fees put forth by the U.S. Customs Service and the Department of the Treasury have been supported by an analysis demonstrating that the proposed fees bear some relationship to the costs, or the value, of the particular services being rendered.

Moreover, the proposals have included broad authority for the Secretary of the Treasury to set Customs user fees annually. Unless the Congress develops them, there will be no statutorily based analyses of the costs of services provided to serve as a frame of reference for a delegation of such authority to the Secretary of the Treasury. In the absence of such legislatively based cost analyses, the Joint Industry Group urges the Congress to continue to oppose any carte blanche grant of authority to the Secretary.

What has been and still is missing from the consideration of Customs user fees is an analysis of the costs of the various services which can be related to an acceptable concept of fees paid by users for benefits bestowed by identifiable services of the Customs Service in entering goods into the United States.

Therefore, as a part of the subcommittee's effort to develop a modification of Customs user fees consistent with our international obligations, the Joint Industry Group recommends that the subcommittee immediately request the GAO to conduct such a study.

The GAO study would identify Customs services that bestow benefits and for which user fees can be considered an appropriate cost of clearing commercial shipments through Customs, given the nature of services provided in commercial entry. Having identified those services for which user fees are appropriately assessed, the study would further examine the costs of providing those services and, presumably, the magnitude of user fees for the individual services performed.

Such a study would provide Congress and the business community with a basis for analyzing such fees and enable the development of specific recommendations on the form of such fees, consistent with good government and good business practices.

Just as important, in the context of this hearing, such an analysis would provide a much sounder basis for demonstrating to our trading partners that we are moving to conform our practices regarding Customs user fees to the requirements of the GATT.

Absent adequate information, the subcommittee and, consequently, the Congress might be left only with a single option: to adopt a form of Customs user fees which is based upon producing a given amount of revenue, rather than a form of Customs user fees related to the cost of the Customs services performed.

We believe it would be preferable to request a postponement of further action of the GATT panel report on the U.S. Customs user fees until the costs related to the Customs services can be clearly demonstrated. To continue to rely on overall budgetary figures in an attempt to fit Customs user fees to assumed transaction costs does nothing to clarify the fiscal purpose of such fees. We believe this course will only risk further objections from our trading part-

ners and possible adoption of similar revenue measures on their part.

The Joint Industry Group hopes that the current Customs user fee authority, scheduled to expire in fiscal year 1990, be allowed to do so, and, if necessary, be replaced by a user fee system based on Customs services which bestow a special and identifiable benefit to individual importers requesting such services.

We want to thank you for this opportunity to be here this morning, Mr. Chairman, and we look forward to working with you in future deliberations on this subject.

[The statement of Mr. Collins follows:]

STATEMENT OF STEPHEN J. COLLINS ON BEHALF OF
THE JOINT INDUSTRY GROUP
BEFORE THE SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS, AT THE HEARING ON PROPOSALS TO
CONFORM CUSTOMS USER FEES TO U.S. INTERNATIONAL OBLIGATIONS
JANUARY 25, 1989

Mr. Chairman, my name is Stephen Collins and I am Director of Economic and International Affairs with the Motor Vehicle Manufacturers Association. I appear here today on behalf of the Joint Industry Group, a business coalition of one hundred trade associations, business firms and professional firms involved in international trade with an interest in customs matters.

I thank you for the opportunity to appear before this Subcommittee. The Joint Industry Group appreciates the Subcommittee's attention directed to examine the problems posed by the current customs user fees and to seek a way to conform these fees to the international obligations of the United States under the General Agreement on Tariffs and Trade.

This Subcommittee is aware that the Joint Industry Group has been and remains opposed to the concept and the imposition of customs users fees for those services which bestow no special benefit on importers. In particular, we have consistently opposed customs user fees for services or actually customs formalities required by the Customs Service under U.S. trade laws and regulations for the general public good.

The position of the Joint Industry Group was summed up four years ago by the General Accounting Office in its Compendium of GAO's Views on the Cost Savings Proposals of the Grace Commission:

> Although additional users fees could be assessed above the current level if special services are provided, GAO does not believe there is merit in assessing users fees for those formalities that are not voluntary because these formalities protect the nation as a whole.

We are aware that this view did not prevail; nor were our views that the proposed customs user fees would be considered to be in conflict with the provisions of the GATT found to be compelling.

It is useful to review this history, however, in order to assure that any change in the customs user fee provision not further compromise the international position of the United States. A part of the history of the current customs user fees system is that its enactment was driven less by the merits of the proposal than by the need for additional revenue. The Joint Industry Group is aware that this Committee has been faced with few options in responding to the budgetary issues regarding customs user fees. The fiscal demands for maintaining revenue remains. Therefore, any immediate change which significantly reduces the current level of revenue produced by the customs user fees will undoubtedly be resisted by the Administration as well as in the Congress. Nonetheless, the customs user fees are scheduled to terminate in FY1990. It is within this overall context that we have sought to develop a proposal that would be helpful to the Subcommittee in conforming the customs user fees to the U.S. obligations under the GATT.

The core of the GATT panel finding on the U.S. customs user fees is that the ad valorem structure is not demonstrably related to the actual costs of the services being performed by the U.S. Customs Service in entering goods into the customs territory of

the United States. GATT Article VIII requires, in fact, that such fees be related to the costs of the services provided.

The absence of any factual basis for assessing customs user fees has made it difficult for the business community and the Congress to deal with this issue from the beginning. None of the various schedules of customs user fees put forth by the U.S. Customs Service and the Department of the Treasury have been supported by an analysis demonstrating that the proposed fees bear some relationship to the costs, or even the value, of the particular services being performed.

Moreover, the proposals have included broad authority for the Secretary of the Treasury to set customs user fees annually to meet the budgetary costs assigned to the commercial operations of the Customs Service. Unless the Congress develops them, there will be no statutorily based analyses of the costs of services provided to serve as a frame of reference for a delegation of such authority to the Secretary of the Treasury. In the absence of such legislatively based costs analyses -- other than presumed overall costs in the budget -- the Joint Industry Group urges Congress to continue to oppose any carte blanche grant of authority to the Secretary of the Treasury to set customs user fees annually.

The Treasury Department on May 4, 1988, outlined its most recent customs user fees proposal. In a letter from the Customs Service to Kenneth A. Kumm, Chairman of the Joint Industry Group, they suggested that the support of Treasury's initiative on customs user fees would be appreciated. In his response, Mr. Kumm noted that while the Joint Industry Group had opposed customs user fees as a matter of principle, its members would like to be able to analyze the impact of possible fees on their business before reconsidering the position of the Group. Mr. Kumm requested information on the types of services that would be subject to fees and the amount to be charged. No response was received, and subsequent less formal requests for the schedule of fees to be imposed under the authority sought in the proposed legislation of May 4th were also unsuccessful.

What has been, and still is, missing from the consideration of customs user fees is an analysis of the costs of the various services which can be related to an acceptable user fee concept of fees paid by users for benefits bestowed by identifiable services of the Customs Services in entering goods into the United States.

Therefore, as a part of the Subcommittee's effort to develop a modification of customs user fees consistent with our international obligations, the Joint Industry Group recommends that the Subcommittee immediately request the General Accounting Office to conduct such a study.

The GAO study would identify customs services that bestow benefits and for which user fees can be considered an appropriate cost of clearing commercial shipments through Customs, given the nature of services provided in commercial entry. Having identified those services for which user fees are appropriately assessed, the study would further examine the costs of providing those services, and presumably the magnitude of user fees for the individual services performed.

Such a study would provide Congress and the business community with a basis for analyzing the impact of such fees and enable the development of specific recommendations on the form of such fees, consistent with good government and good business practices.

Just as important, in the context of this hearing, such an analysis would provide a much sounder basis for demonstrating to our trading partners that we are moving to conform our practices regarding customs user fees to the requirements of the GATT.

We recognize that this recommendation may not fit into the perceived legislative timeframe of responding to the GATT Panel finding on the U.S. customs user fees. However, we all have a long run interest in the nature of customs user fees to be assessed. Only a few countries now impose broad customs user fees based upon the value of goods imported and intended to cover some or all of the costs of customs services or facilities. A 1988 government report summarizing foreign customs user fees indicates that U.S. exporters could be disadvantaged if a majority of our trading partners adopted customs user fees to fully fund the costs of the commercial operations of their customs services.

In this survey by American embassies in 32 foreign countries, only 11 countries were found to have fees based on the value of goods imported or duty assessed, and 6 countries have fees relating to the importation of goods for which some or all of the fees cover the costs of customs service or facilities. We would be glad to provide copies of this analysis for the Subcommittee files.

The Joint Industry Group would prefer to have the Subcommittee proceed on a very careful basis. Absent adequate information, the Subcommittee and consequently the Congress might be left only with a single option, to adopt a form of customs user fees which is based upon producing a given amount of revenue, estimated for budgetary purposes, rather than a form of customs user fees related to the cost of the customs services performed for the benefit of importers upon which the user fees are to be assessed.

It would be preferable to request a postponement of further action on the GATT panel report on the U.S. customs user fees until the costs related to the customs services can be clearly demonstrated. To continue to rely on overall budgetary figures and attempt to fit customs user fees to assumed transaction costs does nothing to clarify the fiscal purpose of such fees. This course will only risk further objections from our trading partners and possible adoption of similar revenue measures on their part.

In addition, we note that the authority to collect customs user fees will expire in FY1990. The Joint Industry Group hopes that this overall customs user fees authority be allowed to expire, and if necessary, be replaced by a user fee system based on customs services which bestow a special and identifiable benefit to individual importers requesting such services.

In summary, the Joint Industry Group favors the detailed study of customs services by the General Accounting Office prior to any change in the existing customs user fees statute, other than adjustment to more nearly reflect the current costs of commercial operations.

We appreciate this opportunity to participate in the process of examining the current customs user fee system and look forward to working with the Subcommittee in its future deliberations on this subject.

Chairman GIBBONS. Thank you very much.

Now, the National Customs Brokers & Forwarders Association, Mr. Wegener.

STATEMENT OF PAUL F. WEGENER, PRESIDENT, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.

Mr. WEGENER. Mr. Chairman, thank you for permitting us the opportunity to testify here today. The National Customs Brokers & Forwarders Association of America has had the privilege and shared the frustrations of working with you and your subcommittee, ever since the institution of Customs user fees, to refine a mechanism that neither of us liked from the start. You are to be complimented, Mr. Chairman, for your subcommittee's perseverance in this effort.

We recognize reality, and we hope that reality will permit you to take the best course: repeal the Customs user fee this year. If fiscal reality does not permit that, we are again prepared to work with you toward a GATT-acceptable alternative. And, then, if that is not possible or practical, we will be candid about that, just as we always are.

Our association has always opposed the Customs user fee since it is a tax and nothing more. It is designed solely to enhance revenues and reduce our national deficit. We, of course, support both objectives, but believe that this fee has nothing to do with improved services and merely represents an impediment to international commerce. However, if a user fee is to be assessed, it has long been our view that only an ad valorem fee is simple enough to work in practice.

The GATT panel decision on the Customs user fee, therefore, poses a vexing dilemma. The panel brushed aside U.S. arguments that "an ad valorem fee provided more certainty and was more administrable for the importing public, for foreign exporters, and for Customs than were the alternatives," ruling instead that "the ad valorem structure of the United States merchandise processing fee was inconsistent with [GATT] to the extent that it caused fees to be levied in excess of [the cost of customs processing for the individual entry in question]." And, unfortunately, the rationale for that decision actually creates the potential for the imposition of non-tariff trade barriers of significant proportions—far more intrusive on the trade process than an ad valorem structure could ever be.

While we appreciate the difficulty in coming up with a GATT-able scheme in light of the panel's decision, our association views Customs' proposed user fee legislation as unacceptable. The transaction-based fee contemplated by Customs invites a wide range of avoidance devices that would only serve to encumber customary commercial processes and transactions. A fee such as that proposed by Customs is so complicated, so burdensome on administrative personnel, and so cumbersome in many areas of commerce that it would be impossible to implement, particularly in an automated environment.

The unworkability of Customs' transaction-based fee notion is underscored by the fact that no one has ever laid eyes on Customs'

proposed fee structure. This is not due to heightened secrecy on the part of Customs; it is due to the fact that a schedule does not exist. In over a year's time, no one in the Government has been able to concoct a draft of what this scheme would look like.

To illustrate our point: If the user fee is based on the entry summary form, the Customs Form 7501, and the fee is, say, $25 per entry summary, the importer with one truck shipment on the border would pay $25. Another importer with 20 truckloads grouped as a single entry would also pay $25, even though the 20 loads were processed at the crossing point by various Customs inspectors.

The USTR not only recognized this consequence in its arguments before the GATT panel, but also pointed out that "each fee-avoidance action would necessitate a fee-adjustment response by the Treasury Department or Congress." This would become necessary since fee-avoidance actions would reduce Customs revenues from the user fee, requiring an adjustment in the fees charged. This cycle casts doubt on the ability of Customs to ever maintain a fee structure which corresponds to processing reality—a requirement of GATT.

To make matters worse, in its proposed legislation, Customs has asked Congress for an unprecedented grant of authority to determine which transactions to select and what fees to levy. This is a tax-raising function that belongs squarely with Congress. It is unthinkable for Congress to delegate this responsibility to Customs and, in the process, economically disrupt many industries and businesses.

We oppose Customs' transaction-based fee concept. It carries with it layers of complexity which have barely been touched upon, inhibiting the smooth flow of international trade. It creates a cycle of fee-avoidance and fee-adjustment which will undermine Customs commercial operations, fostering uncertainty and confusion for importers and Customs brokers.

While there are no easy answers, the NCBFAA is looking at possible alternatives which will satisfy GATT requirements, yet prove more workable from a practical standpoint. Since the GATT decision did not rule out an ad valorem system per se, we are exploring the feasibility of an ad valorem fee with a reasonable ceiling so that the fee charged more closely reflects to the costs of Customs processing than does the current system. While this is not a trouble-free solution, it may offer a system which balances competing interests and concerns.

Mr. Chairman, that concludes my remarks.

[The statement of Mr. Wegener follows:]

Statement of
Paul F. Wegener, President
of The National Customs Brokers and
Forwarders Association of America

Mr. Chairman: Thank you for permitting us the opportunity to testify here today. The National Customs Brokers and Forwarders Association of America (NCBFAA) has had the privilege -- and shared the frustrations -- of working with your subcommittee, ever since the institution of customs users fees, to refine a mechanism that neither of us liked from the start. You are to be complimented, Mr. Chairman, for your subcommittee's perseverance in this effort although the GATT ruling once again reminds us that we may never be able to turn a sow's ear into a silk purse.

We recognize reality, Mr. Chairman. And we hope that reality will permit you to take the best course -- REPEAL THE CUSTOMS USERS FEE THIS YEAR. If fiscal reality does not permit that, then Mr. Chairman, we are again prepared to work with you towards a GATT-acceptable alternative. And then, if that is not possible or practical, we will be candid with you about that, just as we always are.

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Our association has always opposed the Customs user fee, since it is a tax and nothing more. It is designed solely to enhance revenues and reduce our national deficit. We of course support both objectives, but believe that this fee has nothing to do with improved services and merely represents an impediment to international commerce. However, if a user fee is to be assessed, it has long been our view that only an ad valorem fee is simple enough to work in practice.

The GATT Panel decision on the Customs user fee, therefore, poses a vexing dilemma. The Panel brushed aside U.S. arguments that "an ad valorem fee provided more certainty and was more administrable for the importing public, for foreign exporters and for Customs than were the alternatives," ruling instead that "the ad valorem structure of the United States merchandise processing fee was inconsistent with [GATT] to the extent that it caused fees to be levied in excess of [the cost of customs processing for the individual entry in question]." And, unfortunately, the rationale for that decision actually creates the potential for the imposition of non-tariff trade barriers of significant proportions -- far more intrusive on the trade process than an ad valorem structure could ever be.

While we appreciate the difficulty in coming up with a GATT-able scheme in light of the Panel's decision, our association views Customs' proposed user fee legislation as unacceptable. The transaction-based fee contemplated by Customs invites a wide range of avoidance devices that would serve only to encumber customary commercial processes and transactions. A fee such as that proposed by Customs is so complicated, so burdensome on administrative personnel, and so cumbersome in many areas of commerce that it would be impossible to implement, particularly in an automated environment.

The difficulty in establishing a fee structure stems from the wide diversity of Customs services provided from one transaction to another. There are no fewer than 19 different types of entries, with several layers of complex permutations and combinations of possible charges within each category. Finding a single flat user fee charge that appropriately measures the cost of customs processing for this vast array of transactions becomes virtually impossible. And because of its potential protectionist effect on low value shipments, such a single fee presents some very serious GATT problems of its own. On the other hand, a schedule of transaction fees that varies to reflect the myriad types of transactions which occur on any given day would be extremely complicated to calculate, as well as to implement. It would pose staggering administrative demands for Customs, while at the same time creating a disturbing unpredictability for importers.

The unworkability of Customs' transaction-based fee notion is underscored by the fact that no one has ever laid eyes on Customs' proposed fee structure. This is not due to heightened secrecy on the part of Customs. It is due to the fact that a schedule does

not exist! In over a year's time, no one in the government has been able to concoct a draft of what this scheme would look like.

Aside from the enormous complexity involved in establishing a valid schedule of transaction fees, such a system -- if it could be devised and then implemented -- also has the potential for causing highly disruptive processing distortions, as transactions are manipulated to minimize fees.
For example, if the transaction-based fee is charged on each "entry summary form" (Form CF 7501) -- one of the specific possibilities being discussed -- the user fee charge can be easily circumvented. This would be accomplished by grouping multiple invoices on a single Form CF 7501. In fact, under Customs procedure, an importer can combine all his shipments on a particular vessel and count them as a single entry. It is even possible to combine all shipments to one importer within a 10-day period. This can be carried to ridiculous extremes, with virtually hundreds of shipments grouped together as one entry, negatively affecting the user fee revenues by a significant amount, with no decrease in Customs' costs associated with such services as the release of goods.

To illustrate this point: if the user fee is based on the entry summary form, CF 7501, and the fee is, say, $25 per entry summary, an importer with one truck shipment on the border would pay $25 and another importer with 20 truckloads grouped as a single entry would also pay $25, even though 20 loads were processed at the crossing point by various customs inspectors.

The U.S.T.R. not only recognized this consequence in its arguments before the GATT panel, but also pointed out that "each fee-avoidance action would necessitate a fee-adjustment response by the Treasury Department or Congress." This would become necessary since fee-avoidance actions would reduce Customs revenues from the user fee, requiring an adjustment in the fees charged. This cycle casts doubt on the ability of Customs to ever maintain a fee structure which corresponds to processing reality -- a requirement of GATT.

In addition to adjustments caused by fee-avoidance, the U.S. also brought out to GATT that "transaction-based fees would require constant change to reflect [increased costs due to inflation rate increases]...When numerous different transaction fees are set, both Customs and the public would be faced with complex, difficult and expensive adjustments."

To make matters worse, in its proposed legislation, Customs has asked Congress for an unprecedented grant of authority to determine which transactions to select and what fees to levy. This is a tax-raising function that belongs squarely with Congress. It is unthinkable for Congress to delegate this responsibility to Customs, and in the process, economically disrupt many industries and businesses.

* * * * *

We oppose Customs' transaction-based fee concept. It carries with it layers of complexity which have barely been touched upon, inhibiting the smooth flow of international trade. It creates a cycle of fee-avoidance and fee-adjustment which will undermine Customs commercial operations, fostering uncertainty and confusion for importers and customs brokers.

While there are no easy answers, NCBFAA is looking at possible alternatives which will satisfy GATT requirements, yet prove more workable from a practical standpoint. Since the GATT decision did not rule out an ad valorem system per se, we are exploring the feasibility of an ad valorem fee with a reasonable ceiling so that the fee charged more closely reflects the costs of Customs processing than does the current system. While this is not a trouble-free solution, it may offer a system which balances competing interests and concerns.

Mr. Chairman, that concludes my remarks.

Chairman GIBBONS. Thank you, sir.

The panel has certainly pointed out the complexity of trying to come up with a simple fee schedule covering a very complex tariff schedule. I think all of us recognize that. And I think if we all had our ways, we would rather collect the money through a simple, understandable tax than this rather convoluted matter.

But as some of you pointed out, we have been forced into this thing at gunpoint by the Budget Committee and by unbendable, principled people on the other side that want us to raise money. So here we go. We are going to have to work it out somehow.

Maybe if Customs will send us up their best draft, we can convince the other people here in Congress that this is a stupid exercise and we ought to just go to a straight tax, or we could put on a user fee for a limited amount of time with a sunset in it. I realize it has got a sunset in the current law. While I do not hope to get any older any faster, I would like to see some of these things expire and get out of the way.

I do not have any specific questions for you. I know you all find these fees objectionable. You are collecting taxes for the U.S. Government. It sort of reminds me of the old fee system we used to have in Florida where the JP's all got rich off of automobile chasing. If we finally got rid of it in Florida, I do not know why we cannot get rid of it here at this level. But I think I have explained it.

Dick, do you have any questions?

Mr. SCHULZE. Thank you, Mr. Chairman. Just perhaps a comment or two.

Paul, I am inclined to agree with you that if we could develop an ad valorem, small ad valorem with a reasonable ceiling, and then, quite frankly, perhaps even go to GATT or our trading partners and negotiate what would be reasonable, that we could solve this without a lot of complications. And I think the committee shares your concern that we not develop a system which will really retard the flow of trade rather than enhance it.

So if you or any of the panelists and your people refine ideas as you go along, we would be happy to have suggestions which you believe are workable. We know that your interests, even though they may be economic interests, do aid us. Because if we enhance the free flow of trade, your business is better, and we profit more because we collect more.

So I think we are all going in the same direction, and we would appreciate having your counsel and guidance as we go along. We thank you for appearing.

Chairman GIBBONS. Mr. Crane?

Mr. CRANE. I appreciate your testimony, and I agree with you wholeheartedly. I was mentioning to the chairman that this is a police function of Customs. That is when he told me about their practice down in Florida in earlier times. But I said it would be like getting mugged on the street after you have already paid your taxes for police protection, and then because the policeman comes and saves your life, there is a special user fee.

I think that parallel applies in this instance, and I would hope at the very least, Mr. Chairman, that we could let this expire and get back to honest taxes, or as honest as possible.

Thank you.

Chairman GIBBONS. Fine. Thank you.

Since there are no further questions, I guess this concludes the hearing for today. Let me say to the staffs out there, though: I do not want the United States to be a scofflaw in the eyes of the European Community or of Canada. And we ought to move forward vigorously on solving this problem. Let us not let any grass grow under our feet.

Thank you very much.

[Whereupon, at 11:14 a.m., the hearing was adjourned.]

[Submissions for the record follow:]

American Petroleum Institute
1220 L Street, Northwest
Washington, D.C. 20005
202-682-8100

Charles J. DiBona
President

February 2, 1989

Mr. Robert J. Leonard, Chief Counsel
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Leonard:

This letter is submitted on behalf of the American Petroleum Institute in response to the press release dated January 6, 1989, announcing a hearing by the Subcommittee on Trade, Committee on Ways and Means on proposals to conform customs user fees and the Superfund tax differential to U.S.A. GATT obligations. The release provided that a written statement could be submitted for inclusion in the printed record of the hearing in lieu of a personal appearance.

The API is a national trade association of more than 200 companies and 5000 individual members representing all segments of the petroleum industry. This statement will focus on the 3.5 cent differential in the Superfund tax rates under I.R.C. section 4611 between domestic and imported crude oil and petroleum products.

API believes that if the Congress decides to modify the Superfund tax differential in order to bring the tax into conformity with U.S. international obligations, it should do so by lowering the tax rate on imported crude oil and petroleum products to 8.2 cents per barrel--the current rate on domestic crude oil. Any loss in revenue as a result of this change should be made up from general revenues or from an increase in the rate of the broad-based environmental tax under I.R.C. section 59A. We would not support an increase in the rate on domestic crude oil in order to equalize the current tax differential.

When CERCLA was reauthorized in 1986, Congress greatly increased the tax on petroleum (from 0.79 cent per barrel to 8.2 and 11.7 cents respectively on domestic and imported oil) despite the fact that petroleum operations accounted for less than five percent of the hazardous waste generated in the United States. We argued then and we continue to insist that this imposed an inequitable burden on the petroleum industry.

The Superfund program is intended to clean up "orphan wastes" laid down in the past, sometimes a hundred years ago, by companies which no longer exist, are not solvent or cannot be identified. Identified, solvent parties must themselves clean up or pay for the cleanup of any wastes for which they are responsible. The need to pay for the cleanup of the "orphan wastes" is a broad societal problem. Furthermore, the evidence is incontrovertible that responsible parties for abandoned hazardous wastes that have accumulated over many years encompass a wide range of companies, industries and government agencies of all sizes and types located throughout the United States.

Increasing the tax burden on domestic crude oil in order to correct a disparity which violates the national treatments obligation of the U.S. under the General Agreement on Tariffs and Trade would make an already unfair situation even more inequitable. Therefore, the API urges that if Congress determines to modify the differential tax rates on domestic and imported petroleum, it should do so by reducing the rate on imports to 8.2 cents per barrel and should make up any shortfall in revenue through general revenues or increasing the rate of the section 59A tax.

Sincerely,

Charles J. DiBona

WRITTEN STATEMENT OF THE
CANNED AND COOKED MEAT IMPORTERS ASSOCIATION

Submitted to the
International Trade Subcommittee
of the House Ways and Means Committee

In response to the Subcommittee's request for written statements in connection with the Subcommittee's hearing on "Proposals to Conform Customs User Fees and the Superfund Tax Differential to U.S. GATT Obligations", the Canned and Cooked Meat Importers Association ("CCMIA") submits this brief written comment.

CCMIA is a trade association of substantially all U.S. companies which import beef into the United States from South America. In addition to the regular members, CCMIA has service members, such as freight forwarders, warehousers, customs brokers, shipping lines and other carriers, and other companies which assist in the importation of beef from Latin America. The Association was founded more than 35 years ago.

As importers of products entering the United States, obviously the association favors little or no customs user fee. However, if this is not a realistic aim, CCMIA favors inclusion in a services-based customs user fee of one customs-related expense which its members currently bear.

In connection with the intensive inspection by the United States Bureau of Customs of containers entering the United States from South America as part of the U.S.'s drug interdiction program, law abiding importers have been assessed significant charges. While CCMIA, of course, supports the drug interdiction efforts of the government, an unfair burden is currently being placed upon it and other legitimate importers of goods from South America. The cost of these container searches, which can entail removing, then repacking, all of the goods in a container, ranges from $200 to over $800. While our association is working with the Bureau of Customs to minimize the expense of such a search, at present the members bear not insubstantial stevedoring costs associated with such a search.

The current practice in a random search of a container for drugs can entail requiring the importer to transport the container to the facility designated by the Bureau of Customs where that facility's stevedores, often expensive ILA members, must be used to unload and reload the container to prepare it for the search. After the customs search, it then must be transported to the USDA facility for the routine health and sanitary inspection. The association considers it unfair for such costs of the war on drugs to be borne by law abiding importers. For many of our association's members, a random search can eliminate any profit on these low-margin shipments of beef. Some of the companies are small and medium-sized operations with little cushion to absorb such unexpected costs.

In short, if a fee for customs services is levied on importers in the future, we would ask that the costs of preparing the cargo for inspection be borne by the Bureau of Customs and be shared by all importers through payment out of a Customs Users Fee Fund. We would be pleased to discuss any further details the committee or its staff might have concerning the costs entailed in Bureau of Customs drug interdiction searches.

Marcia A. Wiss
Executive Secretary
CCMIA

[BY PERMISSION OF THE CHAIRMAN:]

EMBASSY OF ISRAEL
WASHINGTON D.C.
MINISTER (ECONOMIC AFFAIRS)

שגרירות ישראל
וושינגטון
נייר כלכלי

Written Statement
of the
Government of Israel
Submitted to
The International Trade Subcommittee
of the House Ways and Means Committee

This brief written statement is submitted by the Government of Israel in connection with the Committee's hearings on "Proposals to Conform Customs User Fees and the Superfund Tax Differential to U.S. GATT Obligations" to set forth Israel's position on the user fee and Superfund differential as those charges relate specifically to Israel.

As the Committee knows, Israel and the United States entered into a Free Trade Area Agreement in 1985. This was the first agreement of its kind for the United States and Congressional support for the Agreement was overwhelming. The cornerstone of the Agreement was the reduction and eventual elimination of all duties and tariffs on products traded between Israel and the United States. Both parties further agreed not to introduce new duties or tariffs on products traded between our two countries. Article 4 of the FTA Agreement specifically provides:

> New customs duties on imports or exports or any charge having equivalent effect . . . may be introduced in the trade between the parties only if permitted by this Agreement or by the GATT as in effect on the date of entry into force of this Agreement and as interpreted by the CONTRACTING PARTIES to the GATT and insofar as not inconsistent with this Agreement.

In light of this limitation on "new customs duties on imports . . . or any charge having equivalent effect . . . ", the Government of Israel was distressed to learn that the user fee introduced in 1986--after the effective date of the FTA Agreement--would be imposed on Israeli products. Imposition of the user fee on Israeli products is clearly inconsistent with the Agreement.

The FTA Agreement was further circumvented when the United States failed to give any prior written notice of its intention to impose the user fee on Israeli products. Article 18 of the Agreement specifically requires written notice before either party takes any trade measure with respect to a product traded between the parties.

When these inconsistencies were called to the attention of the United States Trade Representative, the USTR noted the lack of a formal notification to Israel and "directed that it not be repeated." The USTR refused, however, to eliminate the user fee on Israeli products.

Notwithstanding the USTR's refusal, Israel continues to maintain that a user fee imposed on Israel's products subsequent to the FTA Agreement is a violation of Article 4 of that Agreement. This is true irrespective of whether or not the United States should conform its user fee to its GATT obligations vis-a-vis other non-FTA countries. Article XXIV of the GATT, which permits agreements such as an FTA, requires that all duties or charges having equivalent effect be eliminated between the parties to an FTA. The only exceptions to this requirement are those measures permitted under Articles XI, XII, XIII, XIV, XV and XX. Justification for a GATT-consistent user fee is derived from Articles II and VIII of the GATT, which are not Articles listed as exceptions in Article XXIV. Accordingly, user fees on FTA signatory products cannot be justified by resort to Articles II or VIII.

Although Israel was not exempted from the customs user fee, other countries such as CBI countries and least developed developing countries (LDDC's) were. Countries receiving CBI benefits receive them as a result of a unilateral decision by the United States. These countries gave nothing in return for the beneficial treatment. By contrast, Israel's FTA Agreement with the United States is bilateral; Israel gave concessions in order to receive reduced duty treatment. It is inappropriate to provide an exemption from user fees to countries that did not give concessions for duty-free treatmnnt while penalizing a country that did.

In this connection, Israel also notes that under the U.S.-Canada Free Trade Area Agreement, the customs user fee will be phased out for Canada. Israel deserves no less favorable treatment. When Israel suggested to the USTR that treatment comparable to that afforded Canada was appropriate for Israel since Israel is also an FTA signatory, the USTR suggested that in order for Israel to receive comparable treatment, it would be necessary for Israel to give concessions. According to the USTR, since the user fee was part of the negotiations between Canada and the U.S., Canada, in effect, gave concessions for its exemption from the fee.

The user fee was, of course, imposed after Israel signed the FTA Agreement. Therefore, the fee could not have been a topic for consideration during the U.S.-Israel negotiations since it was not even in existence at the time. The USTR's position thus appears to be that, every time a new trade measure is implemented that did not exist before the FTA, even if the measure runs counter to the FTA, in order for Israel to be exempt from such new measure, it will have to give new concessions. Needless to say, this is not what Israel bargained for when it entered into its FTA with the United States.

In light of the above, Israel requests that, in any future legislation regarding customs user fees, the Committee exempt Israel from all such fees. An exemption for Israel is clearly in keeping with both the spirit and letter of the FTA Agreement between our two countries.

As regards the Superfund differential, although imports from Israel of crude oil and petroleum products are minimal (only 0.06 percent of all imports in 1986), Israel believes that an exemption from this charge for Israel is also required under the FTA Agreement if the Superfund differential is continued. The differential is clearly a new duty on imports and, as such, violates Article 4 of the Agreement. Israel notes, however, the USTR's efforts to eliminate the differential and supports that position.

Comments Submitted by
The Society of Independent Gasoline Marketers of America
to House Ways and Means Committee,
Subcommittee on Trade, on the
Superfund Tax Differential
February 2, 1989

This statement is submitted by R. Timothy Columbus, a member of the law firm of Collier, Shannon, Rill & Scott, on behalf of the Society of Independent Gasoline Marketers of America ("SIGMA"). SIGMA is a national trade association comprised of approximately 285 independent marketers and chain retailers of motor fuel. SIGMA's members market motor fuel in all 50 of the states and their sales constitute between 15 and 20 percent of the U.S. retail market for motor gasoline.

In 1986, Congress passed the Superfund Amendments and Reauthorization Act of 1986 which imposed an excise tax on petroleum and certain petroleum products. The tax assessed on imported petroleum and petroleum products was 11.7 cents per barrel, while the tax on domestic petroleum and petroleum products was set at 8.2 cents per barrel, resulting in a differential of 3.5 cents per barrel. In July, 1987, a GATT panel found the Superfund tax to be inconsistent with Article III of the GATT, which prohibits the application of internal taxes to imports in excess of the rate applied to domestic products. The panel recommended that the United States bring the tax into compliance with GATT requirements. In March 1988, the European Community sought to retaliate against the United States. To avoid retaliation, the United States began negotiations concerning compensation with the European Community, Mexico and Canada, which had complained about the Superfund tax.

SIGMA urges Congress to eliminate the differential in the Superfund tax on imported and domestic petroleum and petroleum products. The Superfund tax differential is inconsistent with the General Agreement on Tariffs and Trade ("GATT") and sends a signal that the United States discriminates against imported goods and fails to adhere to its trade agreements. Moreover, the differential threatens the availability of a stable, secure supply of foreign petroleum products.

SIGMA is a strong proponent of free trade between nations. We support efforts to continue trade liberalization and the lowering or removal of tariffs and trade barriers. In that vein, SIGMA supports the principles and disciplines of free trade set forth in the GATT. It is clear that the Superfund tax differential violates the GATT. The deeper concern to SIGMA, however, is that the violation impairs the United States credibility and commitment to the GATT and free trade, in general. It is in the long-term interest of the United States to abide by GATT and support efforts to liberalize the world trade system. It is not sensible for the United States to argue for other nations to eliminate their GATT-illegal trade barriers, while the United States itself is in violation of the agreement. Moreover, the United States' violation of the GATT and subsequent failure to conform to the GATT belies the United States' commitment to the current Uruguay Round of Multilateral Trade Negotiations, called at the urging of the United States. Therefore, the Superfund tax differential should be eliminated to demonstrate that the United States is committed to free trade and will modify its policies which violate trade agreements to which it is a party.

As gasoline marketers, SIGMA members depend on a stable, secure supply of products and competitive prices. To maintain a stable and secure supply of products at competitive prices, it is necessary to have as many sources as possible. Because domestic production of petroleum and petroleum products is unable to meet domestic demands, SIGMA members must rely on foreign sources of supply. In fact, it is widely acknowledged that the United States will always have some dependency on foreign oil.

The Superfund tax discriminates against foreign petroleum and petroleum products from stable, secure sources upon which SIGMA members rely, such as Venezuela and other Western Hemisphere oil-exporting countries. Moreover, SIGMA fears that the Superfund tax on imported petroleum sets a precedent for the imposition of other higher taxes and fees on imported petroleum and petroleum products than on domestic petroleum and petroleum products. Such discriminatory taxes and fees on imported petroleum and petroleum products could reduce the number of reliable foreign suppliers and thereby lead to sharper prices. Inadequate supplies could also pose a significant risk to our national security. Therefore, the differential should be eliminated to ensure continued access to stable and secure sources of petroleum.

SIGMA recognizes the need to adequately fund the Superfund toxic waste clean up program. SIGMA believes, however, that the current funding mechanism incorporating a higher Superfund tax on imported petroleum and petroleum products than on domestic petroleum products substantially impairs the commitment and credibility of the United States in ongoing and future free trade talks and sets a precedent of discrimination which threatens the availability of petroleum and petroleum products from stable, secure sources. SIGMA strongly urges Congress to eliminate the differential in the Superfund tax.

Contact: Martin J. Lewin
429-9355

February 2, 1989

STATEMENT ON BEHALF OF THE UNITED STATES ASSOCIATION OF IMPORTERS OF TEXTILES AND APPAREL, THE NATIONAL RETAIL MERCHANTS ASSOCIATION, THE INTERNATIONAL MASS RETAILERS ASSOCIATION, AND THE NATIONAL APPAREL TEXTILE ASSOCIATION, SUBMITTED TO THE TRADE SUBCOMMITTEE, HOUSE WAYS AND MEANS COMMITTEE, ON PROPOSALS TO CONFORM CUSTOMS USER FEES TO U.S. INTERNATIONAL OBLIGATIONS

The United States Association of Importers of Textiles and Apparel (USA-ITA), the National Retail Merchants Association (NRMA), the International Mass Retailers Association (IMRA), and the National Apparel Textile Association (NATA) are associations of importers and/or retailers importing textiles and apparel. The issue of U.S. Customs user fees is of vital concern to all our members, as textiles and apparel represent a substantial portion of all customs entries.

We are opposed to the imposition of customs user fees. The processing of entries and other Customs Service functions are required by law. Customs activities generate substantial general revenues and are intended to benefit the general public, not necessarily the importers themselves. In fact, customs entry procedures for importers already impose costs without benefits. The textile and apparel industry is burdened, more than any other industry sector, by the most cumbersome and costly system of import regulations and requirements. Adding further costs through the user fee program is an inappropriate financial and administrative burden, as well as MFA- and GATT-illegal.

There is no fair way to assess Customs user fees. Several proposed alternative methods for calculating fees are inequitable or unworkable. Modifying the across-the-board ad valorem structure still would not satisfy GATT Panel findings that it is "inconsistent with the obligations of Articles II:2(c) and VIII:1(a) to the extent it caused fees to be levied in excess of costs," and is "simply taxes on imports."

Alternatively, an attempt to tie the fee directly to the cost of the customs processing, set up in terms of classes of entries, could place a grossly disproportionate financial burden on the textile and apparel industry and other highly regulated industries. As previously noted, the textile and apparel industry is already subject to a cumbersome and costly system of import regulations. These regulations are intended principally to benefit the import industry's domestic competitors, not the import industry itself. Assessing fees by classes of entries would penalize, unfairly, textile and apparel importers for involuntary customs entry requirements. Under this method, user fees for textiles and apparel could be significantly above the average fees for other classes of entries and would represent a further non-tariff barrier to trade in the U.S.

This non-tariff barrier would be contrary to the MFA. In particular, Article III:1 says that "no new restrictions on trade in textile products shall be introduced by participating countries nor shall existing restrictions be intensified . . ." In addition, user fees violate Article IX of the MFA which says that "participating countries shall . . . refrain from taking additional trade measures which may have the effect of nullifying the objectives of [the MFA]," namely "the expansion of trade, the reduction of barriers to such trade and the progressive liberalization of world trade in textile products . . ."

As stated above, there is no fair way to assess customs user fees and we feel they should be dropped. However, should the user fee system persist, the most equitable way to assess customs user fees would be a simple, uniform transaction-based fee for all entries.

We appreciate this opportunity to present our views before the Subcommittee.